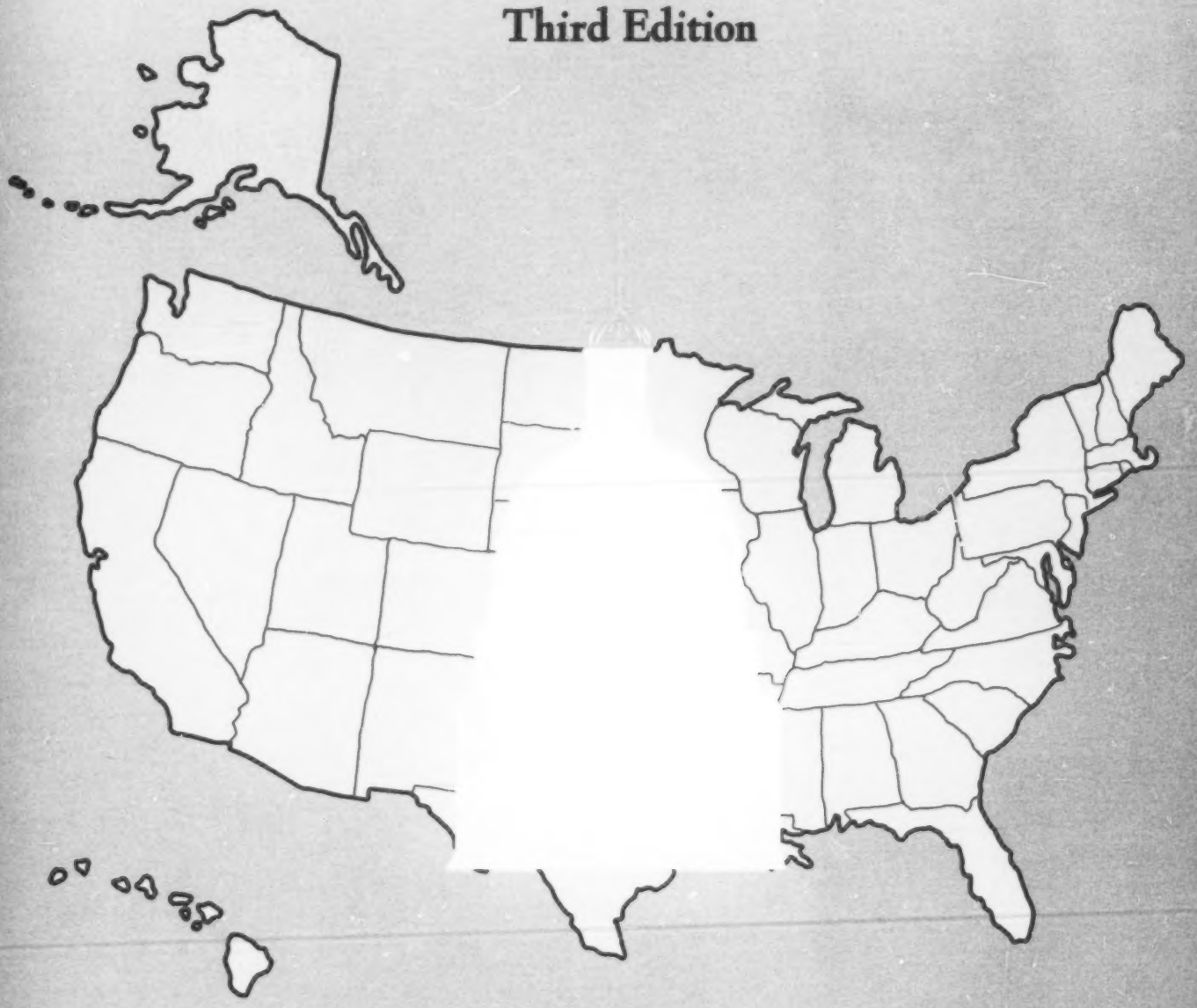
State and Local Government Purchasing

Third Edition



The Council of State Governments

The Council of State Governments

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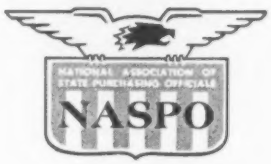
Government Purchasing

Third Edition

The Council of State Governments

The National Association of State Purchasing Officials



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FOREWORD

The Council of State Governments is pleased to release the third edition of *State and Local Government Purchasing*. This book is an invaluable source of information about procurement practices for both the public and private sectors. State government officials can easily reference the text and the tables to compare their own operation to those of other states. Members of the corporate community can get quick answers to questions about state procedures for bidding and requests for proposals. Overall, this book demonstrates the Council's ongoing commitment to building the knowledge base of state governments and helping the public and private sectors work together more efficiently.

Carl W. Stenberg
Executive Director
The Council of State Governments

ACKNOWLEDGMENTS

The third edition of *State and Local Government Purchasing* represents the combined effort of many groups and individuals. The Research Committee of the National Association of State Purchasing Officials really guided the production of this book under the strong and capable leadership of Larry Eisenberg, Committee Chair and Director of the Wisconsin Bureau of Procurement. Others in Wisconsin also made significant contributions to the content of this book and a special thanks goes to the authors of the Wisconsin Small Business Study, Christine Butz, Audrey Rosemeyer, Toni Schlegel, and Marge Schmidt and staff within the Wisconsin Department of Justice and particularly Frank Meyer.

From the National Institute of Governmental Purchasing our appreciation goes to the Executive Director, Lew Spangler and other members of the association who contributed specific knowledge about local government procurement activity.

A special thanks to chapter authors E. R. "Bud" Koon, Florida who is a long time friend and supporter of the NASPO; Patty Kramer, Wisconsin; Robin Zee of Maryland and Keon Chi of The Council of State Governments.

On that note let me acknowledge the staff people at the Council of State Governments who work directly with our organization. Their assistance and guidance in the publication of a document of this magnitude is invaluable and all members of the organization owe a word of appreciation to their efforts.

Tom Bostick
NASPO President
Georgia

1. Introduction

Purchasing, some might say, doesn't need introduction. It is an everyday activity for almost everyone, necessary to keep the wheels of commerce turning. Purchasing is another word for buying, and everybody knows what buying is.

This is true, of course, as to purchasing being an everyday activity. But introduction is needed here because professional purchasing is a quite different and more complex matter than the kind of buying that takes place in shopping malls and supermarkets. Especially is this the case with public purchasing and contracting, which is governed by statutory law, operating rules and regulations, court decisions, administrative law rulings, recommended practices, designated procedures, specific conflict of interest provisions, and the overall proprieties that attach to public service.

What, then, is state and local government purchasing? First, there is the connotation of "acquisition," then the broader implications of "procurement" and "materials management." As used in this publication, "purchasing" means all of these: a comprehensive program that includes the acquisition process, general oversight of inventory management, and the ultimate transfer of disposition of excess and surplus property. Beyond this, "purchasing" will refer also to contracting for many kinds of services, in addition to equipment, materials, and supplies. It will not, however, include contracting for major construction and public works types of projects or for the purchase and sale of land and rights-of-way.

Though purchasing, in all its aspects, is a daily activity essential to the operation of government, is only slowly becoming well understood. There seems always to be questions as to whether it should be primarily fiscally-oriented or service-oriented. Some management executives ask to what extent it is a problem-creating or problem-solving function. One survey found top management not able to tell poor purchasing from good purchasing. The concepts and practices necessary in governmental purchasing to promote and safeguard competition can be difficult to grasp.

Purchasing as a whole, and public purchasing in particular, contributes to these uncertainties. It has not analyzed and explained itself adequately — to administrative superiors, to the taxpayer, to the using agencies it serves, and in some respects to itself. This may be due in part to an apparent reticence on the part of purchasing people to seek visibility or be assertive.

As a result, purchasing tends to be seen by those not engaged in it as a routine, housekeeping function that can be performed by persons of nominal skill and ability.

A study by a university business professor supports this impression. The study found that while purchasing practitioners see themselves as decisive and having the characteristics of leadership, senior management views them as being strong in accuracy, loyalty, and perseverance but lacking in imagination, analytical ability, aggressiveness, and leadership. An earlier but more limited study came out somewhat differently: conducted by a business consulting firm, its results indicated the better purchasing agents were influential, emotionally stable, and generally possessed the characteristics of a good business manager. An interesting aspect of the two inquiries is that the first-mentioned relates primarily to job performance while the second and earlier one is a personality test.

In either case, purchasing has not defined itself either as to the ways it can be most effective in the structure of management, or as to its objectives and measures of performance.

Largely for this reason, the development of purchasing in state and local government has been spotty and uneven. A materials-management/total-supply concept has come about in comparatively few jurisdictions. In an even scarcer number does central purchasing handle contracts for services. In different programs, purchasing may not have responsibility for the competitiveness of specifications, for the determination of sole-source procurement, for market analysis and the timing of purchases, for advising or deciding as to appropriate quality and quantity levels, for evaluating unsolicited offers, for transferring and disposing of surplus property, or even for reporting suspected collusive bidding.

Definition of the purchasing function begins with a clear understanding of the fundamentals of public contracting. Chief among them are competition, impartiality, conservation of funds, and openness. Briefly translated, they mean that public business is to be offered for competition; that bidders are to be treated alike and contracts administered alike, without favoritism; that economy and value are basic aims; and that documents used and actions taken are public information.

It is the purpose of this book to look at these fundamentals, together with the purposes and duties and problems, and the potential and shortcomings, of state and local government purchasing, to the end that its programs may be more fully understood and continuously improved.

* * * * *

The balance sheet of central purchasing in state and local governments shows some significant assets. One of these is a consistent high standard of ethical behavior. Close examiners are routinely surprised at the freedom from sharp practices and misconduct in the letting of purchase contracts by capably staffed central purchasing offices, in contradiction to the popular notion that improbity is not unusual in public buying transactions.

Another, and related, asset is that purchasing people are a dedicated people. They enjoy what they do and believe it is important. Where the general public seems to think of

it as a rather drab, uninteresting kind of work, purchasing people find it demanding and absorbing. Someone has suggested that this may indicate most people don't know much about purchasing, or purchasing people don't know much about what makes life interesting.

In any case, dedication and sound ethics, aligned securely on the cornerstones of competition, impartiality, economy, and openness, are the best assurance that a program can meet the challenges of kaleidoscopic times. Living "in an outburst of change," as one writer puts it, brings on confusion and instability. At the same time, it opens opportunities for improvements. Here, we shall want to ask how public purchasing can find advantage in a waterfall of change rather than be swept about by its swirling currents and events.

The tool common to our accelerating technological advancement is the computer. In purchasing it will increasingly automate routine tasks and process data. It is an invaluable partner in stores and inventory management, and in compiling purchasing information which manually is not timely, or even feasible. The computer's remarkable quantitative capabilities can streamline the purchasing process. Useful software appears regularly, and overnight. Yet the professional purchaser is not, nor will become, a robot. An important outgrowth of computerization will be the necessity for clearer differentiation between those things that can be advantageously quantified and those that are properly qualitative.

The computer is only a part of a revolution in telecommunications. While voice communications still account for a lion's share of telecommunication's traffic, data communication is increasing so rapidly it will soon dominate. It is not yet known, for example, who may lead the way to electronic bidding, or when, but it behooves purchasing to prepare for it.

Government purchasing and contracting goes back almost to the beginnings of government itself. The need for materials and supplies is universal, and if they aren't acquired by gift or by force, or aren't self-produced, they must be bartered, rented, or bought. But in spite of this length and variety of experience purchasing lacks a sense of history, which deprives it of continuity and perspective and subjects it to repetitive, excessive trial and error. Developing a well-ordered, continuing record of experience would add substantially to purchasing's vigor in the short term and to its productive growth in the long term.

Akin to this is a deficiency in the efforts of purchasing offices to profit from the experience of their counterparts. This failing impedes the development of internal quality standards and controls that can help ensure competitiveness in specifications, coherence and simplicity in solicitation documents, adequacy in inspection and testing, and defense against anti-competitive forces.

On a broader scale, this insular tendency also impedes the momentum of innovation, which is particularly noticeable in the scant transference and utilization of cost-reduction and cost-containment ideas.

Some of the disinclination of purchasing programs to borrow and adopt from one another is attributable to lack of resources. Many ideas and improvements take on the mantle of projects. Typically understaffed, beset by daily work demands, the purchasing office seldom has available, qualified personnel to undertake studies and special projects. This is a type of qualitative assignment too often missing in purchasing planning and budgeting.

With new opportunities, change brings new expectations. Anticipating them allows purchasing to better determine its future. A few are intrinsic and predictable.

Purchasing will be expected, by senior management and by the public at large, to show more demonstrable results. This entails being more cost-conscious and value-oriented. It calls for more evaluation criteria under competitive bidding that take into account qualitative differences in commercial products, as was initiated for energy-related items during the petroleum shortage in the 1970s . . . for devising evaluation factors which measure price and performance relationships to arrive at best value. And it will require focusing on means to achieve reduction and containment of costs. In these ways purchasing will make distinctions between price and cost, will define tangible economy, will provide incentives for sellers to improve product quality, will change its "low-bid" image, and will enable management to recognize good purchasing. Specification writing and bid evaluations will take on the appearance of investing funds rather than merely spending them.

State and local government purchasing will be increasingly involved in the issues of protectionism and contracting for various services that government customarily has handled in-house.

Protectionism is generally defined as the term used in economics for a theory and system of trade barriers. It is usually associated with international trade, but the problems it presents for purchasing take more direct and immediate forms. In-state preference, and any other product preferences or bidder preferences, are types of protectionism. So is resale price maintenance — legal or otherwise, and most-favored-customer-pricing, and collusive bidding, as discussed further in the text. All work against free and open competition, and in opposition to the principles of competitive bidding.

Governments have long contracted for different types of services. A few examples of professional services frequently contracted are accounting, medical, architectural and engineering, printing, maintenance of equipment, and pest control. This practice is now growing to one of contracting for many services which government has traditionally performed for itself. These include food services, building and grounds maintenance, security, data processing, care of the mentally ill, and even the building and operation of jails and prisons. Central purchasing shall have to respond to this trend by taking a long-range view that includes expanding its resources and refining its techniques to play both advisory and contracting roles in carrying out these procurements.

Purchasing shall have to face broadened, but not altogether new, expectations of accountability. And in some respects purchasing is well-positioned to do this. The two areas in which both government policy-makers and the public are likely to have major concern have to do with cost-effectiveness that derives from focusing on value instead of price, and with ethical practices. Both of these have already received mention and are discussed more fully in the text.

For the professional, accountability is an attitude, a safeguard, a sense of trustworthiness, and a duty. This introduces a point from which to consider what things purchasing can further expect of itself.

Central purchasing can expect to have to better define its purposes and *raison d'etre*. This is not an easy task. One academician has questioned whether purchasing has an underlying theory or is a rational process. Lack of explicit definition prevents purchasing from being well-understood and from being recognized as a leading function.

Purchasing needs to clearly stand for something, and to articulate what it stands for. It has a fundamental basis for this in showing that open, competitive bidding and the principles of public contracting contribute directly to national competitiveness and to the health and welfare of a free enterprise economy.

Professional purchasing can expect to seek new ways of describing itself, in general terms as well as in reports to management and governing bodies. Among numerous other things, this includes drawing attention to its role and value in setting a high ethical tone for government as a whole. Central purchasing occupies a unique position in crossing and re-crossing agency lines while simultaneously representing government to the private business community. This internal and external exposure and the sensitive nature of awarding and enforcing contracts allows its behavior to be an example. In this context it can expect to have to emphasize and defend impartiality as the purchasing definition of fairness.

Another unique role is found in central purchasing's capacity for fostering cooperation among different departments and institutions. It can be a primary coordinator in a variety of inter-agency relationships, including data processing acquisitions, contracting-for-services decisions, developing common use product specifications, and the transfer and utilization of excess property.

Purchasing can expect to envisage itself increasingly as more than a ministerial function. The planning, decision-making, and managerial responsibilities necessary to conduct a successful procurement program call for initiative, discretion, judgment, and creative solutions.

* * * *

This publication seeks to present a balanced look at state and local government purchasing . . to view it from all sides, positive and negative. It seeks to stimulate an attitude that sees the total purchasing experience as a continuing one . . an attitude that widens horizons to productively use the knowledge of the past in shaping the vision of the future. It seeks to illustrate the fundamentals that can separate the important from the unimportant, the essential form the trivial. It seeks to encourage public purchasing as a profession to clarify and affirm its identity, and it seeks to motivate individual jurisdictions to reinforce basics and elevate their programs to higher levels.

Justice Holmes has reminded us that what counts is not only what we are, but the direction in which we are headed. State and local government purchasing is still striving for its potential that will better serve the public whose money it spends, the departments and institutions who use what it buys, and the vendor community which furnishes what it asks for. The ideas for information set out in this book can help point the way and keep the course.

2. Overview

State and Local Government Purchasing is a resource for executive and legislative policymakers, agency and department heads, senior program managers, and public procurement officials. It is a text for line practitioners of public purchasing.

The 1975 Edition offered the first comprehensive research on the acquisition of goods and services by state and local jurisdictions. The Second Edition (1983) was conceived as more of a textbook on the principles and practices of public purchasing, although firmly rooted in updated research and surveys. This edition has the broadened focus — making it valuable to a wider audience — addressing the support of public policy by public procurement management and identifying the strengths and weaknesses of that support through analysis and interpretation of a dozen years of survey data. The text continues to emphasize public procurement principles and practices (the recommended "essential elements" highlighted at the beginning of subsequent chapters) in the complex and sometimes stressful relationships with other management imperatives, e.g., policy direction, budgeting and accounting, and in the equally complex and often stressful relationships with customer agencies and departments and the jurisdiction's vendors and contractors.

This edition also continues to develop the concept of public procurement as an evolutionary process in which state and local jurisdictions should, and, in fact, do serve as laboratories of government. New ideas and different approaches can be tried by one or more jurisdictions and demonstrate the success attained, or an inherent error or failure, with minimum risk — from which others can learn. One of the important purposes of the National Association of State Purchasing Officials is to communicate widely innovations and other material supporting that mission.

Dissimilarities among state and local governments, which facilitate their acting as natural laboratories, should be kept in mind when assessing statistics and the conclusions arrived at through analysis of the data as extrapolated in the text material. Even a substantial majority does not constitute consensus. Every purchasing program has its strengths and weaknesses attributable to differing governing law, operating rules and regulations, quality of management, political tradition, and availability of resources. This book discusses and makes specific recommendations regarding purchasing law, rules, and management. It cannot speak to political traditions which universally are unique. And it can only stress the importance of necessary resources. The wise course for each jurisdiction is a thoughtful adaptation of the principles and practices, not uncritical adoption. Consider this book as a road map with effective procurement as the destination rather than a detailed blueprint which limits ingenuity and innovation.

An effective central purchasing program reduces the cost of government. It inspires public confidence in government. It directly improves the quality and timeliness of services rendered by program departments and agencies. It is the government's meaningful link to the business community. It promotes honesty and integrity throughout governmental operations. It is an everwidening channel of intergovernmental cooperation. It is, indeed, a function which a government jurisdiction can ill-afford to undervalue.

But, frequently, the procurement process is undervalued, viewed as a technical exercise rather than being incorporated into the management continuum of a jurisdiction. This is an issue of parity. To borrow from computerese, the management I/O firmware of a jurisdiction must be: revenue — budgeting — procurement.

This text examines public procurement — planning, purchase, management and disposition — of equipment, materials, supplies, and services. It does not address, specifically, construction or other public works, including repairs or alterations, or the acquisition of lands or right-of-way. Public works contracts in general, however, are subject to the same principles and procedures which apply to the purchase of goods and services. (It should be noted that in a growing number of jurisdictions, particularly among the states, "limited trades work" contracts, i.e., minor repairs or refurbishing not requiring involvement of architects or engineers, are being assumed by the purchasing office.)

The 1983 Edition suggested a need for this kind of publication lay in a variety of events of national scope affecting substantially the conduct of purchasing by state and local governments — some favorably, some adversely. Some of these, and more, will continue to affect public procurement. But, before polishing the crystal ball to identify these events, in all fairness it is necessary to examine the cumulus effect of the last forecast.

- The detailed study of the federal procurement system by the Commission of Governmental Procurement, 1969-1972, has had very little impact upon state and local government. Few meaningful recommendations of the 149 made to Congress for changes or revisions have been adopted.

- The detailed research of the First Edition (and the 1983 Edition as well) has not been utilized as broadly as hoped — and as it should have been.

- The current version of Attachment "O", "Procurement Standards", to *Office of Management and Budget Circular A-102*, has remained in place through the efforts of the National Institute of Governmental Purchasing and the National Association of State Purchasing Officials. Both associations continue to monitor recommendations of a federal task group for further modifications.

• The Office of Federal Procurement Policy has served as an advocate for state and local government on occasion, but does not see these jurisdictions as an important part of its constituency.

• The American Bar Association *Model Procurement Code for State and Local Governments*, *Recommended Regulations* for implementation, and the *Model Procurement Ordinance for Local Governments* remain major events of the past decade, affecting both present and future conduct of state and local government purchasing.

• The efforts of some industry groups and associations to discredit competitive bidding as the preferred method for purchasing commercial products continues with perhaps more subtlety than a decade ago.

• Virtually all public purchasing professional associations have joined with the National Institute of Governmental Purchasing and the National Association of State Purchasing Officials in the Universal Public Purchasing Certification program. A single certification program for private/public purchasing professionals remains a possibility, but not an immediate probability.

• Public purchasing got "good press" from a number of studies conducted by the General Accounting Office and the Congressional Research Office of the Library of Congress looking for methods to improve public procurement, primarily regarding federal purchasing, but both clippings and memories tend to fade.

• The policy initiated at the beginning of this decade calling on states and local governments to finance and administer programs previously handled by the federal government remains a challenge for those jurisdictions and particularly for public procurement as an agent for cost containment.

• The 1983 Edition was also responsive to growth in state and local government purchasing activity cited in 1980 as 12% of the GNP or $300 billion annually.

Six valid forecasts out of ten is not bad. It encourages further prognostication:

• With the reduction of federal grants-in-aid, it can be expected that federal agency oversight and audit will be concentrated on a correspondingly narrower segment of state and local programs. The requirements of Attachment "O" and any amendments to those standards will be important concerns to state and local government purchasers.

• The American Bar Association *Model Procurement Code*, the *Recommended Regulations*, and the *Model Procurement Ordinance* will continue to be under consideration. The early swell of adoption/adaptation, largely by jurisdictions in need of law reform, has abated, but the impact of the model law, ordinance, and regulations will continue to be a presence in the refinement of public purchasing for decades to come.

• Professional certification is becoming a greater element in career advancement. The past decade has seen a growing number of public personnel offices listing certification as a desirable qualification. And many public purchasers have achieved great personal realization through the certification process. The quality of professional training, largely the effort of NIGP, has greatly improved.

• There can be no question as to the quantum growth of state and local government purchasing. Where, at one time, corporate government sales offices concentrated on federal procurement, marketing efforts of considerable sophistication are now directed at state and local purchasing programs.

• A substantial part of the growth in procurement activity has been in the purchase of services. Contracting for ministerial and support services is a complex and demanding process made no easier by frequently unrealistic expectations of increased service quality and/or less cost. In 1975, only 20 of the states had specific authority in statute law for the centralized purchasing office to obtain services. As state governments have recognized the need for structured, professional procurement of services, state purchasing laws have been amended and 32 states now place that responsibility with centralized purchasing. In the 1987 NIGP Procurement Survey, 71% of those units of government responding show responsibility for the procurement of services in their purchasing office. The survey indicates that nearly 30% of local purchasing expenditures are for the purchase of services.

• The increase in high technology acquisition calls for talents and experience not often found in the central purchasing office. Public purchasers must learn to manage project teams to muster the required expertise and may, in fact, become major customers for the purchase of consultative services.

• Privatization, i.e., the divestiture of both management and assets of a public function to the private sector, has become a popular option. However, purchasing's expertise in property disposition and appropriate contract formation is seldom utilized.

• Forty-nine states have a centralized purchasing office although most are not all inclusive — the judicial and legislative branches, higher education, and transportation being the functions most frequently remaining autonomous. But, if the pendulum of public policy has swung toward centralization, it may have reached its apex and be reversing the arc. The concept of purchasing as close to the point of need as possible has validity, but only when directed by thoughtful policy, adequate training and authoritative monitoring. Pressures for delegation simply to enhance the posture of program management — and program managers — are of growing concern to the public purchasing community. Program managers' purchasing priorities are understandably parochial — purchasing managers in the centralized office relate to the commonwealth of the jurisdiction and the conservation of the taxpayers' dollars.

• In an era of continuing fiscal stress for all governments, public purchasing is a positive, if sometimes

underutilized, resource for cost containment. Public purchasing managers can demonstrate savings not only in acquisition costs, but throughout the procurement spectrum.

This variety of events of a national scope demands well-thought-out policies and continuing improvement and refinement of purchasing techniques. The genesis of policy rests with executive and legislative leadership and supporting staff, and this text is directed to them as well as the purchasing professional, the journeyman purchasing agent, and the apprentice or student.

The success of a public purchasing and contracting program rests on sound design and effective implementation. Sound design is rooted in statute or ordinance law with a good structural framework of rules and regulations. Effective implementation requires sufficient resources — an adequate budget, competent personnel, an effective support system, and resourceful management — situated within the jurisdiction's administrative structure with parity with other management functions and with positive executive and legislative support. Purchasing's mandate is economy for the taxpayer and confidence in public officials.

The purpose of this text is to promote excellence in public purchasing, retaining those elements which do so, and changing those needing to be improved or viewed differently. This purpose extends back to the First Edition and to the *Model Procurement Code for States and Local Governments* developed by the American Bar Association, two projects interrelated and funded by the Law Enforcement Assistance Administration. It was expected that the Model Code would implement, in model statutory language, the conclusions and recommendations of the 1975 publication. Unfortunately, the correlation was not altogether realized.

The National Institute of Governmental Purchasing and the National Association of State Purchasing Officials have strongly supported — and will continue to support — the idea of a Model Code. Both associations agree there is much to commend in the product of the American Bar Association, but have reservations about parts which are not consonant with state and local experience. When this text addresses the elements of excellence for a purchasing system, it will emphasize adaptation rather than adoption of the ABA Code.

For both the policy maker and the purchasing manager the commentary offered with the Model Code language may be equally valuable. For example, in Article 3, "Source Selection and Contract Formation":

> The purpose of this [Article] is to provide procurement officials with adequate authority to conduct procurement transactions by fair and open competition under varying marketing conditions in order to satisfy public needs for supplies, services and construction at the most economical prices. Fair and open competition is a basic tenet of public procurement . . . Competitive sealed bidding [is] the preferred method of procurement. There can be no better expression of excellence in public purchasing.

The *Model Procurement Code*, and the *Model Procurement Ordinance*, which is more responsive to smaller local governments, both offer a variety of options and strategies for the growing complexities of public procurement. A major conceptual basis for the Code is the separation of policymaking and operational functions. As yet, there has not been widespread consideration of this format. It is intended to reduce political and other influences on purchasing decisions, and to free the operational segment from the role of policymaking, preventing conflicts of philosophy, if not of interest. Further demands for delegation may bring a sharper focus on this option.

Among the purchasing strategies in the Code and the Ordinance is a greatly enhanced array of source selection, notable competitive proposals which is a very structured form of competitive negotiation.

Overall, the American Bar Association *Model Procurement Code* has brought about greater public awareness and interest in the improvement of government purchasing, and for this the public purchasing community is deeply grateful.

The National Association of State Purchasing Officials was less than a year old when its members conducted their first survey. "Purchasing by the States" was published by The Council of State Governments in 1949. "Purchasing by the States II" followed in 1954-55 and version III came ten years later. Subsequent broad surveys have become part of each edition of this text. The National Institute of Governmental Purchasing has been querying its members for almost as long and just as intensively. The most recent of these surveys provide the base for the analysis and interpretation which shapes this text.

Disparities between programs of state government and those of local government make it impractical for survey questions to be the same for both groups. But, while not identical, they are similar. The National Association of State Purchasing Officials' survey is a marked departure from previous NASPO surveys. It is designed as a software model to replicate previous responses from individual states so that, in responding, a state need only address changes. Materials has been regrouped within the survey to present more cohesive subject groupings, and facilitate analysis in greater depth.

But, again, there needs to be the caveat: A majority does not constitute consensus, and a jurisdiction has to adapt to its own laws, needs, and history.

However, the surveys and succeeding chapters point to the fundamentals and needs of a sound and effective purchasing program required to support the policy and direction of executive and legislative leadership.

One fundamental is the role of central purchasing as a contact point between the jurisdiction and the federal government. While the amount of grants-in-aid has diminished, grantor agency oversight and audit has not. It is important for the grantee jurisdiction to have experience and professionalism on the point — central purchasing fills that role, delegation erodes it.

Technology continues to have an impact upon public procurement, both in what is now being purchased and how the purchasing process will be conducted.

In the less complex world that saw the beginnings of the professional public purchasing associations what was to be acquired present only moderate challenge after a purchasing agent had a body of experience. State purchasing statutes and local ordinance were attuned to a similar level of operations. No amount of experience can accommodate the intricacies of today's high tech acquisition. The principles and policies of public procurement continue to apply — and this is the role of the purchasing office — but program specialties, engineering, and, frequently, accounting elements call for the incorporation of outside experts into a procurement team. An examination of the jurisdiction's purchasing law as it does or does not respond to high tech acquisition is a critical first step into the new age. The ideal is a law implemented by appropriate rules and regulations which permits the central purchasing office to manage a resource team through the procurement process. This text outlines the fundamentals of that ideal.

When internal resource personnel are not available (or inappropriate!), the central purchasing office has to look to the contracting of consultative services. This text addresses issues of competency and possible conflict of interest in the delivery of services.

The public purchaser is greatly concerned when the decision process leading to purchase of services may be deficient or defective. Contracting is only one of many alternative approaches to the delivery of services and even when it is the option of choice, it is critical for the purchasing manager to know the decision environment as this is critical to the development of a solicitation and subsequent contract. The appeal of "downsizing" government can dictate expectations which may not be realized in the procurement process.

Recent developments in computers and computer-driven telecommunications are affecting the methodology of managing decision data, solicitations and responding to bids/proposals (the definition of sealed bid may be altered) and the ordering process. Computer networking among customer agencies and central purchasing strengthens the concept of centralization by reducing or eliminating stressful delays and imperfect communications.

Centralized purchasing has been the goal — albeit with differing degrees of priority — of the states and any local jurisdiction of appreciable size. Historically, much emphasis has been placed on the rationale of economy of scale. Unfortunately, bigger is not always better and concentration on acquisition cost to the exclusion of other important management criteria has led to the disenchantment of policy-makers and programs managers.

This text identifies management criteria best served by centralized purchasing:

Unification of policy

Consistency of purpose and decision-making

Adherence to the spirit of rules and principles of public contracting

Policy sensitive planning and scheduling

Timing to advantageous markets

Management of assets through inter-agency transfer

Unified cost containment management of all aspects of the procurement spectrum

And, most important, emphasis on the interest of the jurisdiction and its taxpayers with accountability for that interest vested in a single office.

Even though centralized purchasing curtails or eliminates the troublesome practices of dispersed procurement, there remain impediments to competition and other aspects of the program which continue to concern public purchasing managers.

Competition is diminished when preference is sought by one sector of government or a class or classes of vendors. The National Institute of Governmental Purchasing and the National Association of State Purchasing Officials have joined in strongly worded resolutions opposing the use of most-favored-customer pricing clauses and multiple award contracts. Both practices, employed by the federal government and others, have negative effects on competition throughout all public contracting. The first sets a floor on prices and is favored by firms which enjoy commanding positions in the market place. The second transfers the buying decision from central purchasing to using agencies by offering a virtually unmonitored free choice from a smorgasbord of multiple awards. Obviously, this practice is favored by well-positioned equipment manufacturers as a method superior to competitive bidding for buying their products.

Jurisdictions other than the federal government are known to employ these practices, although the impact on the marketplace is less infrequent and localized. But, the federal government — and in direct relationship with the types of purchases made by states and local governments — particularly the Federal Supply Service of the General Services Administration is perceived by many vendors as "making the market." Outmoded federal procurement regulations often prevent competitive bidding from producing successful results which encourages the use of restrictive pricing and multiple awards.

Growing frustration over the failure of conventional approaches to these problems suggest executive and legislative leadership may want to join the public purchasing community in bringing to the attention of the Congress the costs of these practices to all levels of government, including the federal establishment.

Preference, accorded one class of vendors over all others, strikes at the basic principles of public purchasing: equity, impartiality, open competition, and the least cost to the taxpayer. The genesis of preference laws and administrative fiat is political, and the trade-off of anticipated

socioeconomic goals must be weighed against the demonstrable adverse effect upon other public policies and goals, not the least of which is excellence in public purchasing. This text presents recent studies on this issue which raise the question as to whether preference benefits the targeted special interest groups in the long term.

The American Bar Association will not propose specific socioeconomic programs in the Model Procurement Code "until the law in this difficult field is more clearly established."

Chapter 4, "The Competitive Process", and Chapter 12, "Safeguards", update efforts to combat antitrust violations, fraud, waste, and abuse. Public purchasers must take note of recent case law, e.g., *Jefferson County* and *Boulder*, which have further reduced sovereign immunity and require that public bodies be subject to essentially the same contractual obligations as the private sector. Local jurisdictions, at least, appear to be subject to the Robinson-Patman Act. Consequently, government policymakers and managers must reconsider their roles regarding breaches of anti-trust legislation and their exposure to liability.

The thrust of this text — the support of public policy by public procurement management — is distilled in the "essential elements" heading each of the following chapters. These are recommendations for statutory and regulatory coverage and for the practice of public purchasing. They are intended as benchmarks against which current law, rules and performance may be measured. The goal is to promote excellence in public purchasing.

3. Purchasing Structure, Policy and Authority

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Clearly define legislative intent while providing suitable administrative discretion in central purchasing, i.e., be not so detailed and definite as to be unduly restrictive.

Establish a central purchasing authority responsible for policy-making and oversight of public contracting by the jurisdiction and establish a central purchasing office responsible for management and direction of the full spectrum of procurement activities.

Establish an office of chief purchasing official with requirements for prior experience and provision for limited tenure.

Include a provision transferring prior rights and powers relating to purchasing and supply management from departments and agencies to the central authority.

Define the organizational placement of the central purchasing function at a management level to ensure that sufficient authority, independence, and safeguards are provided to foster the goals and objectives of the purchasing program.

Define the accountability, responsibility, and authority of central purchasing, authorize delegation by central purchasing, and exclude blanket exemption for any agency.

Require using agency adherence to purchasing law and to central purchasing rules, policies, and procedures when delegation is extended; direct central purchasing to monitor all delegated purchasing activities.

Define key words and phrases and any words having special meaning in the purchasing statute and central purchasing rules.

Require rules and regulations for certain purposes and authorize the policy-making authority to adopt any additional rules, not inconsistent with the statute, to carry out the purpose of the law.

Provide that words in the singular include the plural and the plural includes the singular.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Prescribe conditions and the manner by which central purchasing may delegate authorities and functions to other agencies.

Authorize the chief purchasing official to delegate duties and convey assignments to staff employees.

Authorize central purchasing to have responsibility for the content and correctness of solicitations and contracts, including specifications and contractual terms and conditions.

Authorize central purchasing to negotiate the transfer of contractual obligations when a current supplier is involved in a consolidation or merger.

Recommended Practices

Purchasing should be management-oriented and address the full range of procurement activities, including planning, acquisition, standards and quality assurance, contract administration, and disposition programs.

Purchasing goals and objectives should be established and set forth in writing.

Central purchasing should delegate routines and activities that can be more logically, effectively, and efficiently performed by others.

There should be written instructions governing activities central purchasing delegates to other departments and agencies, including the manner in which such activities will be monitored by central purchasing.

The management role of central purchasing and its internal functional organization should be depicted and described in writing, and this information widely disseminated.

Coordination and cooperation must be developed to unite the technical expertise of purchasing and the users to effectively carry out the purchasing program.

Team buying should be encouraged as an effective technique that provides commodity specialization, experienced backup, and group decision-making.

The structure of the central public purchasing authority must conform to its unique status: government procurement is an "act in agency," a special relationship which calls for the purchasing official to act for others, to commit their budgets, and to influence their programs. Central purchasing is one of the few government responsibilities that cuts widely across agency lines, and possibly the only one with the primary mandate to conserve public funds. This distinctive legal position and the duties which attend it demand that purchasing be conducted in a peer relationship with the agencies it serves.

The conventional view of public purchasing is that it seeks to procure goods and services at economical prices. This is, perhaps, almost the extent of the general public's

understansing of the function. Not fully perceived are a number of basic distinctions between public purchasing and private purchasing. Spending public moneys calls for non-restrictive specifications, prohibitions against negotiation following the public opening of sealed bids, legal penalties for acts of favoritism and conflict of interest, and above all the public interest, not the private interest, held paramount. Also not well understood, even by many public purchasing people themselves until the last few years, are the management aspects of the function. The attention of a purchasing program is directed naturally to the acquisition phase. Yet effective acquisition depends on many decisions and actions that precede and follow awarding a contract or issuing a purchase order.

Both law and policy must recognize that within a framework of safeguards to protect the public interest, a sound and progressive system requires that public purchasing officials have freedom to exercise professional judgment and personal initiative. A productive public purchasing program must be more than a ministerial assignment. Governmental purchasing is a complex combination of law, economics, engineering, methodologies, and public policy. The continuing development of highly specialized goods and services which can become obsolete in a relatively short time necessitates that purchasing officials remain up-to-date as to technical knowledge, market conditions, and purchasing methods and skills. The successful program has the ability to adjust to fluctuating circumstances in a complex marketplace that reacts to social, political and economic forces, and local, national and international events, which are largely unpredictable. Without this flexibility, purchasing cannot meet the government's needs advantageously.

POLICY AND MANAGEMENT

Public purchasing policy is expressed through different means. Formally, it is structured by way of statutes and ordinances, rules and regulations, policy manuals, administrative procedures, and manuals written for internal operations and for vendors' information. Less formally, it evolves through unwritten practices. Sometimes policy is defined by the courts, as in the case of the ruling that the purpose of laws requiring competitive bidding is the conservation of public funds.

Unfortunately, purchasing law and policy in many jurisdictions, and particularly the states, have become fragmented, contradictory, and confusing. The time has arrived when effectiveness and consistency demand that procurement policy be unified.

To obtain uniform purchasing policy, some states have established a board or commission responsible for purchasing policy. Separation of policy-making and operations is consistent with the American Bar Association Model Procurement Code (MPC).

A policy board has two primary functions. First, it formulates rules and regulations to implement purchasing statutes, acting as the sole rule-making authority. Second, the board oversees procurement operation for compliance with applicable rules, acting as a monitor for accountability, enunciating public purchasing policy, and serving central purchasing as a forum for policy related questions.

A policy board should be small, consisting of only three to five persons. The board can be compromised of individuals outside of government appointed by the governor or by the governor and the legislature, or an internal board comprised of members holding positions dealing with fiscal matters. A board can also have members from both the public and private sectors.

Several states have established boards or commissions to promulgate rules and regulations concerning purchasing. For example, Texas' purchasing rules and regulations are prescribed by the State Purchasing and General Services Commission, and in Maryland they are the responsibility of the Board of Public Works. In other states, a cabinet-level official or some other gubernatorial appointee is charged with responsibility for developing purchasing rules and regulations. For example, in Kentucky procedures are authorized by the Office of the Secretary of the Cabinet of Finance and Administration. The Division of Purchases is part of the Cabinet of Finance and Administration. In a few states, the official responsible for purchasing implementation is also responsible for issuance of rules. For example, in Georgia the Director of Purchasing issues purchasing rules and regulations. Generally, rule-making authority is allocated within state governments by state statutes.

There is perennial debate as to the extent to which policy should be detailed in statutory law. With respect to purchasing, studies made over the past quarter of a century recommend that statutes include only broad requirements and authorizations to be implemented by appropriate rules and regulations.

Apart from policy, the management and operation of public contracting in many jurisdictions also is likely to be scattered among different agencies and institutions. The problems presented by this, however, are not necessarily analogous to those related to diffused policy-making authority. A number of purchasing routines and decisions can be, and often should be, delegated to operating agencies without loss of effectiveness.

A prerequisite to overall purchasing management is central responsibility. Recognizing that there are different levels of government and various sizes of purchasing programs, the constant element should be a central purchasing authority responsible for assuring that the principles and attendant requirements of the purchasing program are met. At the state level, and for large units of local government, the purchasing authority should rest in a central staff and office. In some local governments, purchasing is so small an activity that it may be handled by one individual on a full- or part-time basis. In any case, there should be a single authority in each governmental unit responsible for assuring the integrity and effectiveness of the program. Accountability assigned to a single point provides incentive to produce positive results.

In a 1987 survey conducted by the National Association of State Purchasing Officials and The Council of State Governments, 18 states participating in the study reported a trend toward centralization in purchasing policy. The figure for local governments has increased to 88 percent. Forty-nine of the fifty states have a central purchasing office which buys or contracts for the requirements of most or all state agencies.

Management orientation is basic to the concept of a central purchasing authority. The purchasing program encompasses much more than merely buying or placing orders. It must shape its policies and procedures to identify with the public interest. Functions such as planning and scheduling, establishing contractual terms and conditions, soliciting and evaluating bids and offers, and awarding contracts are only parts of the acquisition process. Contract administration is an important aspect of purchasing management, as are quality assurance, transfer and disposal of surplus property, and safeguarding the legitimate interests of using agencies and vendors. The preparation of standards and specifications and the conduct of inspections and tests have to be closely integrated with acquisition. Specifications must designate what is needed, and promote fair competition. Testing often is required in developing specifications and in evaluating bidders' offerings for award and subsequently, upon delivery, as an adjunct to inspection in determining compliance with specifications.

Central purchasing also should be the center for information on sources of supply, vendor performance and bidder responsibility, inventory levels, and commodity usage.

A management-oriented program regularly reviews the exercise of its authority in terms of the activities it should retain and those that may be suitably delegated. The principal goal of purchasing management is to serve the best interests of the jurisdiction and the taxpayer.

Goals and Objectives

Certain traditional purposes of the purchasing assignment remain valid: to buy the right quality at the right time at the right price from capable suppliers. But the duties and responsibilities of a public central purchasing office extend far beyond this. Law requires that public purchasing be conducted without favoritism and without arbitrariness or caprice. The taxpayer expects goods and services to be acquired in an efficient manner, and the articles bought to be warehoused, maintained, transferred and eventually disposed of economically and advantageously.

Purchasing management recognizes these responsibilities, some of which are explicit, and some of which are implied. A management-conscious program that encompasses the idea of overall supply operates to serve the public interest more completely through such goals as:

- Achieving professional excellence and communicating this to using agencies, administrators, officials, and the public.
- Striving to improve employee motivation and productivity.
- Encouraging innovation by a program of study and research.
- Seeking and refining quantitative purchasing performance measures.
- Controlling the costs of the purchasing operation.
- Endeavoring to direct legislation toward comprehensive purchasing management.
- Working with using agencies and with vendors to bring about cost reductions.
- Reviewing systematically comparative cost benefits of performing work in-house or contracting it out.
- Using automated procedures to provide current, accurate information.
- Developing a continuing program for buyer and supervisory training.
- Using team buying and other organizational configurations for more effective performance.
- Keeping open communications with news media.

These are broad aims. They require periodic review and appraisal in terms of progress toward specific objectives.

PURCHASING LAW

The purchasing statute or ordinance establishes not only the legal base, but the policy base and much of the philosophical base of the public purchasing and contractual program. Because of this broad-based effect, extensive thought and care need to go into the drafting process, whether it is a new statute, a rewrite, or an amendment.

Unfortunately, in many state and local jurisdictions purchasing laws have been passed or amended in a piecemeal fashion, over many years, reflecting what seemed a good idea or politically expedient at the time. As a result, they tend to be disjointed, outdated, and inadequate in a number of respects.

Interest in state and local government purchasing laws began to increase following World War II and has spread steadily into the 1980s. During this time, the National Institute of Governmental Purchasing, the National Institute of Municipal Law Officers, the National Association of State Purchasing Officials, The Council of State Governments, and the American Bar Association have sought, separately and together, to examine the public purchasing function and make recommendations for improving it. For example, the American Bar Association developed a Model Procurement Code which has been adopted by several states, including Kentucky, Colorado, Alaska, Maryland, Utah, Arizona, and Arkansas.

It appears safe to predict that these studies and efforts will bring about revisions and additions to virtually all state and local laws, rules, and regulations which will help modernize and advance the governing base of their purchasing operations.

These efforts have several common themes: openness and fairness are fundamental to public contracting; purchasing should be centralized; competitive sealed bidding

is the preferred method for obtaining prices; and purchasing statutes and ordinances should set out general provisions characterized by clear intent, and require or otherwise authorize that detail be left to implementing rules, regulations, and operating procedures.

Exemptions

Some state statutes provide blanket exemptions from central purchasing for designated agencies, commodities, or both. Often, agencies may be exempt for historical reasons — those that traditionally have been highly autonomous organizations, perhaps with segregated funding. Other agencies have been permitted to purchase highly technical items on the grounds they have a particular expertise. Neither exemption, however, is consistent with the concept of central purchasing. The long-standing tradition of autonomous and politically powerful agencies is difficult to overcome, yet it should not override the fundamentals of a purchasing program that is not advantageous to the taxpayer.

If the legislative body determines that certain items are especially appropriate for purchase delegation, such as museum displays or text books, a provision should be enacted providing that "unless otherwise directed by the (policy board or other rule-making authority), the following requirements need not be procured through the (central purchasing office); procurement shall, however, be made in accordance with the purchasing statute and applicable rules and regulations of the (purchasing authority)."

The argument for direct purchase of highly technical and specialized equipment by using agencies is not a valid cause for blanket agency exemption. Instead, it is more appropriate for agency expertise and central purchasing expertise to work closely together in preparing technical specifications and in evaluating bids and offers received.

Moreover, where a purchase is made under a "total cost" concept, which takes into consideration initial costs plus maintenance, operating, and related costs, data from several using agencies may be necessary for making cost comparisons and evaluations. Purchases of highly technical items, such as x-ray equipment, telecommunications equipment, and computer hardware and software, usually require the combined expertise of a number of agencies working together with central purchasing. For example, when procuring computer equipment, experts in automatic data processing provide certain technical information for preparing and evaluating bids, and the using agency supplies information on the intended use of the equipment. Central purchasing, however, manages the acquisition process, preparing the Requests for Bids, including contractual provisions, soliciting bids, evaluating responses, and awarding the contract. After award, central purchasing has the continuity of experience and the machinery to bring together specialized information for high technology procurement which afford a perspective not available to the individual using agency.

STATUTORY AIDS

Definitions

Statutory and regulatory material can benefit by a section of definitions to reduce the likelihood of misinterpretation and misunderstanding. Furthermore, the use of common definitions facilitates everyday communication between state and and local government units.

Terms such as "specifications" and "standard specifications" should be precisely defined, as should "formal bidding" and "informal bidding." The word "emergency" should have a specific meaning when it refers to situations that can lead to an emergency purchase, and even the word 'purchase" might need definition because questions may arise as to whether it includes leasing, renting, and the acquisition of such things as insurance, printing, and certain services.

A section of definitions can also serve to establish shorthand expressions for clarity and to avoid cumbersome repetitions. For example, in a fully centralized organization where purchasing acquires goods and services for all governmental elements, the term "agency" can be given generic meaning to represent a long list of designations, such as department, institution, board bureau, commission, division, and office, which otherwise would be listed repetitively throughout the statute. The glossary contained in Appendix D contains accepted definitions useful for incorporating into statutory and administrative law.

Declaration of Policy

A sound purchasing system must be adaptable and responsive to changing conditions. Consequently, while statutory language should be kept to a reasonable minimum, avoiding unnecessary restrictiveness and detail, a section in the purchasing law setting forth the underlying policy of the purchasing statute can provide help and guidance to the rule-making authority and to central purchasing operations. A policy provision can also support discretionary actions and rules and regulations issued pursuant to the purchasing statute, if they come under legal or judicial scrutiny. Such declaration of policy, or statement of purpose, should incorporate the following elements:

- The concept of a central purchasing authority to institute and maintain an effective and economical program for purchasing goods and services.
- The recognition of obligation to the taxpayers, the using agencies, and the suppliers.
- The enhancement of competition on the basis of fair opportunity and equitable treatment.
- The obtaining of needed equipment, materials, supplies, and services at favorable prices in keeping with suitability, appropriate quality, and reliable vendor performance.

The following "Declaration of Policy" section is an example paraphrased from an existing statute:

Recognizing its obligations to the public, to the services rendered by state agencies, to the business community, and specifically to overall economy for the taxpayer, it is hereby declared the policy of the State to provide an effective central purchasing program through which, by means of competition on the basis of fair and equal opportunity extended to qualified persons and firms interested in selling to the state, state agencies may obtain needed goods and services at competitive costs consistent with suitable quality and time of performance.

ORGANIZATION

Positions in Government

The central purchasing authority must be able to exercise independent professional judgment in dealing fairly with vendors, coordinating requirements with other government departments and agencies, providing timely and quality service, and protecting the public interest. It also must be able to relate to vendors and agency administrators from a position of authority in keeping with its responsibilities. Purchasing's independence and effectiveness can be affected either positively or negatively by its placement in the government structure. Factors such as organizational and management philosophy, tradition, the size of the purchasing program, and resources available to it have a major effect on this consideration. There is no one best organization arrangement; what may work well in one state or local government may not work as well in another.

The 1987 Procurement Research Survey conducted by the National Association of State Purchasing Officials reveals that all but one state has some form of centralized purchasing. Mississippi is the exception, and its Department of General Services supervises the state's procurement endeavors. However, in most states the central purchasing office does not handle purchases or contracts for all state departments or agencies. Exemptions are frequently granted to the legislative and judicial branches. Other frequent recipients of exemptions include state colleges and universities and department of highways and transportation. Several different agencies have been exempted by the states, such as the Department of Mental Health in Alabama, the Auditor General's Office in Michigan, the Public Transit Authority in Rhode Island, and the Alcohol Beverage Control Board in Virginia.

As the scale and complexity of procurement grows, many central purchasing agencies have made increasing use of delegation of authority for purchasing functions to agencies. Such a delegation might include authority to write purchase orders against mandatory-to-buy-contracts and a dollar ceiling below which agencies may obtain their own quotations, to a grant of considerable autonomy conditioned on central policies, rules, and procedures. Frequently, exemptions deal with specific commodity areas such as alcoholic beverages and fresh vegetables. In 1964, 30 states reported the purchasing office was part of an integrated management department, e.g., administration, general services, or finance. By 1977, the number increased to 46 states, and in 1981 the purchasing function was incorporated in an integrated management department in every state but one. This continues to be the case in 1987.

Fundamentally, the need is to place the central purchasing authority at a high level in the governmental hierarchy. The majority of state and local governments studied have one or two persons between the chief purchasing official and the chief executive. In these governments, public purchasing operates as a bureau or division within a department. In some instances the department head, though he or she may have no experience or ability in public contracting, has the statutory or legal responsibility for purchasing. In other instances the operating head of the purchasing division is designated by statute or ordinance as the chief purchasing official.

For cities and counties where the size and volume of the purchasing activity call for a central office, its goals and objectives are more likely to be met if it is established as a separate unit on equal footing with other major departments. For local governments where central purchasing rests with a single individual, that individual needs sufficient authority and responsibility to achieve purchasing's purposes.

While it is not possible to set forth a single plan of organization that would be ideal for all state or local governments, the central purchasing function should occupy a level of authority which provides the stature necessary to coordinate and deal with other departments and agencies effectively and which, at the same time, is designed to prevent purchasing decisions being influenced by partisan political pressures or other considerations which would represent favoritism.

AUTHORITY OF CENTRAL PURCHASING

Central purchasing requires clear and adequate authority to carry out its responsibilities. An example of conferring this authority is found in a state statutory provision under which "all rights, powers, duties and authority relating to state printing or to the acquisition of supplies, materials, equipment, and contractual services, now imposed upon or exercised by any state department, institution or agency under the several statutes relating thereto, are hereby transferred to the (central purchasing office) and all said rights, powers, duties and authority are hereby imposed upon and hereafter shall be exercised by the (central purchasing office) under the provisions of (this Act)." The Model Procurement Code contains a similar stipulation.

In addition to this general type of provision, the chief purchasing official should have broad statutory authorization, subject to rules and regulations, to purchase and contract for needed goods and services, to establish and

enforce purchase specifications, to have general supervision over inventories of equipment and supplies belonging to the the jurisdiction, to prescribe forms and require information from using agencies relating to the purchase and management of goods and services, to transfer or sell any items that are excess or surplus, and to delegate authority to staff and to using agencies to perform these duties.

If a policy board option is chosen, the policy board not only should have statutory authorization sufficient to adopt any rules and regulations to carry out the purposes of the law, but it also should be specifically required to establish rules on particular matters, such as small purchase procedures and confidentiality of certain types of information.

In fulfilling its duties, the policy board should be careful to include rules under which central purchasing is authorized to:

- Determine the terms and conditions applicable to solicitations and contracts.
- Decide lead times and schedules for the receipt of agency purchasing requisitions.
- Reject agency purchase requisitions for cause, including inappropriate quantity or quality of an item requested or time for making the purchase, and undue restrictiveness of specifications.
- Determine whether an item may be purchased more advantageously if obtained separately from a contract for construction.
- Negotiate the transfer of a contract when suppliers are involved in corporate consolidations, acquisitions, or mergers.
- Refer disagreements between central purchasing and a using agency concerning a purchase requisition to the policy board.

PROFESSIONAL COMPETENCE AND TENURE OF THE CHIEF PURCHASING OFFICIAL

Practices vary among state and local governments regarding the qualifications required for state or local procurement officials. According to a 1985 survey done by the National Institute of Governmental Purchasing approximately 77% of the jurisdictions surveyed require a college degree for their chief procurement officer; over 64% require between four and nine years of experience in the procurement field and over 11% require ten years of experience or more. In addition, over 61% list certification, such as Certified Public Procurement Officer (CPPO), as desirable.

In terms of selecting the chief procurement officer, 35% of those reporting employ the practice of appointment; a total of 28% also fill the position by appointment with removal for cause only; and over 30% fill the position through the civil service system. The American Bar Association Model Code includes a recommendation that the position of chief procurement officer ought to be filled either through appointment by the Policy Office or the office of the governor or mayor. The occupant of the position should have at least eight years experience in procurement, five of which ought to have been in large scale public procurement within the twelve years prior to the appointment. The appointment should be for a duration of ten years with removal for cause only.

As with the possible need for a policy board, the importance of qualifications and tenure for the chief purchasing official is proportional to the duties and responsibilities of the central purchasing office. Where the purchasing and contracting authority is highly centralized, and the operational head of the office serves in fact as the jurisdiction's primary contracting officer, the requirements should be exacting and tenure provided. For such an operation at the level of a state or large local government, the requirements should be not less than those indicated by the Model Procurement Code, including a specified minimum term and removal only for cause.

Irrespective of the size or nature of a jurisdiction, public purchasing cannot afford to be influenced by or become subject to partisan political consideration. Favoritism in public contracting is unlawful, undermines good government, and is detrimental to an incumbent administration.

DELEGATION BY CENTRAL PURCHASING

The chief purchasing official, like any executive, has to make delegations of authority to his staff. Delegations should provide for prior review of certain types of actions at appropriate levels of supervision.

The chief purchasing official must also be able to make delegations to other departments and agencies. Thus, purchasing law should provide authorization for both internal and external delegations. Delegations should be made in writing and may be for a specific circumstance, for a designated period of time, or for an indefinite period unless changed or revoked. Delegations should be conditioned upon the level of capability in the delegated office and upon competent performance.

Centralization of purchasing authority does not mean that all decisions and actions should be carried out by or in the central office. In many jurisdictions, geography is a necessary consideration — the wider the using agencies are scattered, the more impractical it can be to route every purchasing action through a central point. One aspect of a management-oriented program is the delegation of routine and detail when they can be performed more logically and efficiently by others.

Ultimately, centralization becomes a matter of degree. There are some duties which should be centralized. One of these, without question, is the formulation of policy, rules, and regulations. Others, to the extent practicable, are:

- Developing or adopting product standards and specifications.
- Preparing formats and contractual terms and conditions under which bids or offers are solicited.

- Determining awards of large volume purchases and major contracts.
- Prescribing standard forms to be used and standard procedures to be followed.
- Operating a central purchasing data system.
- Mediating protests and disputes between using agencies, bidders, and contractors.
- Imposing penalties for non-performance of contracts.
- Developing a standard commodity coding system.
- Designing a uniform inventory program.
- Transferring excess property between and among agencies and making final sale or other disposition of surplus property.
- Preparing reports for top management and the legislative branch of government.

On the other hand, many day-to-day purchasing activities can be successfully delegated to using agencies, ranging from making small purchases and contracting for various kinds of local services to issuing purchasing orders to vendors and inspecting and accepting goods at time of delivery.

In making appropriate and practical delegations, central purchasing should maintain overall legal authority, responsibility, and accountability for implementing the purchasing program and establishing the policies, procedures, and controls for delegation.

INTERNAL ORGANIZATION

In considering the functional organization of a central purchasing program, the underlying concept needs to be one of overall materials management, not merely acquisition. Such a program includes planning, acquisition, quality assurance, and transfer and disposal. The levels of knowledge and experience and the quantity and quality of resources (manpower, funds, facilities, and equipment) available in a state and local government are major considerations in determining the kind of internal organization that is most workable.

The organizational placement of purchasing, its internal functional organization, and the basic interrelationships with other departments should be illustrated in chart form and described in writing. Effective communication and working relationships among all of the activities are necessary if such an organization is to be dynamic and successful.

ACQUISITION PROGRAM

As indicated earlier, the acquisition aspects of the purchasing activity embody planning and scheduling; consolidating agency needs for volume buying; developing specifications; preparing Requests for Bids and Requests for Proposals, and soliciting bids and proposals; receiving, opening, and evaluating bids and offers, and making awards; expediting and administering contracts; and monitoring vendor performance. Planning and scheduling needs greater emphasis than it has been given traditionally. This management activity should play an important role in budgeting, reducing unit costs through volume buying, consolidating and validating agency needs, and determining how these needs can best be met. Greater attention should also be given to contract administration. This responsibility needs to be adequately defined and centrally administered to assure that suppliers meet contractual terms and conditions.

The design of the Request for Bids or Request for Proposals is critical to every procurement. Basic considerations are: the contractual terms and conditions which must be written to protect the interest of the government; openness of specifications; requirements for transportation and delivery; and instructions as to how the bidder is to submit the proposal. Solicitation also includes the organization and maintenance of bidders lists, the prequalification of suppliers, giving public notice, and the need, if any, for bid security. Solicitations should seek full competition for all purchases and provide fair and equal opportunity for all qualified persons or firms to compete. The evaluation and award of offers require determinations of responsiveness and responsibility; criteria for award and for rejection, to arrive at the most economical and advantageous bid or proposal; and public availability of information as to the prices and products tendered.

To the extent that a cooperative purchasing program exists between government units, management responsibilities for the program should be placed in a central purchasing office. The leasing or renting of equipment, and related lease versus buy decisions, are also proper responsibilities of the central purchasing authority, as are contracts for repairs and maintenance of equipment and contractual needs such as janitorial and laundry services. Whether or not central purchasing actually handles solicitations and awards of such contracts, or delegates aspects of them to operating agencies, is determined by geographical factors, local conditions, staff size, workload requirements, etc. When the solicitation of competition is delegated to using agencies, it is good practice for central purchasing to design and require the use of a uniform bid solicitation document for the particular type of requirement, including the contract terms and conditions to apply.

Questions sometimes arise as to whether purchasing must have full in-house technical expertise necessary to buy certain items such as printing or insurance. Some central programs have separate sections, including risk managers, that are responsible for purchasing insurance; in other cases, program appropriateness and decisions to self-insure or to purchase are made by risk managers outside of purchasing or by insurance boards. The laws governing public contracting customarily apply to the purchase of printing, which is covered by the inclusion of any special provision that might be needed. As with insurance, some purchasing programs have separate sections that handle requirements for printing and publications. Central purchasing in a number of jurisdictions handles both of these needs successfully and at considerable cost savings.

Similar considerations relate to the purchase of professional services, such as management consulting, architect and engineering, and medical and legal services. Using agencies must necessarily play an important role in drafting statements of work and in evaluating technical proposals. In some state and local governments the personnel department must determine that the hourly or other rates proposed are acceptable. Recognizing the need for using agency technical assistance and perhaps some outside personnel administrative controls, however, the central purchasing authority and its governing rules and regulations should exercise an overall responsibility in contracting for professional services.

The question of exemption relates also to the purchase of real estate and buildings, including the leasing of space. The acquisition of real property is usually governed by a separate set of rather complex laws. It can be argued that real estate is not a biddable item, but this in itself should not be a reason for excluding it from purchasing's responsibility. The leasing of space is biddable and should be subject to competitive bidding. With the assistance of outside expertise, purchasing can effectively apply public contracting principles to the purchase and leasing of lands and buildings, though usually with exclusion of condemnations, rights-of-way, and lands for recreation.

In discussing the acquisition program as it relates to internal organization, the concept of team buying is especially important. Team buying, where more than one person is responsible for purchasing in the same commodity area, is a highly recommended practice. It improves commodity specialization by providing several persons who are knowledgeable in the same product areas. It assures backup, and it allows for group decision-making with overall responsibility resting with the team leader. Finally, when engineers, pharmacists, instrumentation specialists, and other technically trained and experienced personnel are included on the teams, the preparation of non-standard specifications is facilitated and expedited, with the overall effect of a more unified processing of purchase requisitions and reduction in turnaround time for using agencies. Standard specifications and qualified products lists can remain the primary responsibility of a standards and inspection section.

Few state purchasing offices continue to rotate buyers. The practice is not recommended for several reasons. Many products have become so specialized that a purchasing agent cannot be proficient in all commodities. Furthermore, a high degree of individual specialization is necessary for central purchasing to advise using agencies regarding the availability of different products for various applications, to consult with agencies relative to purchase specifications, to determine the most advantageous methods of purchase, to exchange information with manufacturers' representatives, to make correct decisions concerning restrictiveness of specifications, and to properly evaluate products offered on competitive bids. Thorough product knowledge is as important to effective buying as it is to successful selling.

STANDARDS AND QUALITY ASSURANCE PROGRAM

The standards and quality assurance program covers the activities of standardization, specification writing, inspection, and testing. The processes involved in developing standards and standard specifications address the subject of commodity usage, while inspection and testing have to do with vendor performance. The basic duty of the standards and quality assurance program is to provide a technical resource for the overall procurement effort, and when it functions effectively, the combined value of a standards, inspection, and testing program can be inestimable. It should be a component of any complete purchasing organization and should operate under assignments that are well defined. A highly effective arrangement can be developed whereby a small technical staff concentrates on standard specifications, inspection and testing, and unusual technical problems, while much of the everyday specification work is handled by technical and other specialists on purchasing teams. For states, cities, and counties without the resources for a separate staff, the individual responsible for quality assurance can obtain valuable assistance from other governments — state, local, and federal. No matter how limited a government's resources may be, quality assurance remains a responsibility of the central purchasing authority. In a broad-based purchasing program, traveling field inspectors play an important role, especially for large governmental units which serve agencies over a wide geographic area.

DISPOSITION PROGRAM

The two primary activities associated with the disposition program are the transfer of excess property from one agency to another and the ultimate disposal of surplus property by means of sealed bids, auction, posted prices, site sales, or direct negotiation. The latter two methods are usually reserved for scrap. While some governments trade in used equipment for new equipment, most of them find upon analysis that they receive more value by transfer or larger monetary return by outright sale.

In jurisdictions which also manage the federal surplus property program, one or more separate administrative organizations are usually created, resulting in considerable duplication. Consideration needs to be given to the advantages of combining the state and federal surplus programs. Sharing warehouse and distribution facilities can work to the benefit of both programs by providing a more concentrated availability of items, attracting more visits from using agencies, and reducing manpower needs. Further, though separation of certain aspects of the two programs is required due to special eligibility, record keeping, and reporting requirements imposed by federal regulations, central purchasing and recipient agencies can realize advantages from a single overall supervision of both programs.

The transfer, utilization, and trade-in or other disposition of excess and surplus property are integral parts of materials management, and the administration of such programs, state and federal, should be the responsibility of the central purchasing authority.

4. The Competitive Process

Essential Elements

Recommended Statutory Coverage

The purchasing statute should:

State that competitive sealed bidding is the preferred method of procurement and the justification for use of any other process, except for small purchases, shall be documented by the purchasing official.

Require rules (including public notice, sealed responses, and public opening) for all purchases expected to exceed a predetermined dollar amount.

Provide for waiver of competition in defined emergencies, sole-source procurement and under other circumstances as defined by rule, and require rules for documentation and justification of each action.

Require bidders to certify non-collusion and provide criminal penalties for collusive bidding unless specifically provided elsewhere.

Specify that when identical low bids are received, the central purchasing office may make awards in any reasonable manner intended to discourage identical bidding.

Prohibit use of most-favored-customer pricing clauses, and provide that in-state or other local preference for bidders or products may be given only when there is no sacrifice or loss in quality, performance, or price.

Establish a process that allows vendors to administratively appeal specifications and award decisions that appear to violate purchasing rules and statutes.

Empower the central purchasing office, subject to implementing rules and regulations, to reject all bids and negotiate or otherwise purchase in the open market when satisfactory bids cannot be obtained.

Exempt, by state legislation, political subdivisions from antitrust laws and provide specifically that award of a large quantity or the total quantity of a jurisdiction's requirements to a single supplier through competitive solicitation does not constitute discrimination or restraint of trade.

Require that the jurisdiction's officials and employees disclose any interest in ownership of bidding firms, if not otherwise provided in separate conflict-of-interest statute.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Require by rule that Invitations for Bids and Requests for Proposals be issued to a large enough group of potential suppliers to obtain adequate competition.

Require adequate competition, defined as seeking responses from known qualified suppliers consistent with the size and nature of the intended purchase, while continuously adding to the list of qualified suppliers by locating viable new sources.

Prohibit the issuance of letter-of-intent-to-purchase in advance of soliciting competitive bids or proposals.

Require cost or price analysis for negotiated prices.

Require that any extension or renewal of contracts, except under emergency conditions, be provided for in the original solicitation for bids and the resulting contract.

Specify that clauses allowing extension or renewal of contracts awarded under competitive bidding may be exercised at the sole option of the public jurisdiction — not by mutual agreement.

Require that vendor appeals be handled in a thorough, expeditious, and fair manner.

Prescribe procedures for price adjustments.

Require participation of the attorney general in determining periods for retention of purchasing records for antitrust purposes.

Require prompt payment, e.g., 30 days after invoice or acceptance of goods and services, whichever is later.

Recommended Practices

All purchases should be made in a manner that fosters maximum competition among a sufficient number of prospective bidders.

Purchasing officials should challenge routinely all using agency requests to limit competition; representation of sole source should be particularly challenged.

A bid/award history file should be established and maintained and these data should be analyzed to detect suspected or apparent collusive bidding.

Attorneys general should sponsor training seminars for purchasing officers on collusive bidding and other procurement-related antitrust matters.

Proposed legislation that would effect purchasing should be coordinated with the central purchasing authority.

In government, as in private industry, a primary purchasing objective is to obtain suitable goods and services at favorable prices. In government, however, goods and services are direct costs to the taxpayer, whereas in industry their costs can be passed along, as part of the cost of goods sold, to the ultimate consumer. Thus, a price may be acceptable in industry as long as it is not higher than that paid by a competing firm or does not result in a competitive disadvantage. In government, the lowest responsive and responsible bid price carries more weight. Also in its duty of representing the taxpayer's interest, public purchasing must carry out its work under public scrutiny. Statutes and regulations customarily require state and local governments to solicit competition for all purchases, and usually by means of open competitive sealed bidding over a specified dollar level. This requirement is intended to secure sound value, to guard against favoritism and profiteering at public expense, and to promote the interest of private enterprise by providing equal opportunities to compete for government business. The procedure of publicly opening sealed bids has long been recognized as one of the best protectors of a healthy and equitable public purchasing system. A unique characteristic of public purchasing is the underlying principle that *prices are not as critical as fairness and impartiality* in obtaining them.

A criticism frequently leveled at public purchasers, often by disgruntled unsuccessful bidders or undiscerning program managers, is their emphasis on form as well as substance. Integrity is a principal stock in trade for the public purchasing official. Integrity is manifested by fairness, openness and impartiality and can be tarnished by even the slightest appearance of erosion, much less actual dimunition, of these elements. Form, i.e., consistency, is essential in generating and maintaining competition.

DEFINING COMPETITION

Discussion of competition throughout this publication is from the viewpoint of public contracting, not that of the economist, sales marketer, or legal theorist.

Competition presumes a marketplace in which there is more than one supplier of a like commodity or service. Competition exists *not only* in prices, but in the technical competence of vendors, in their ability to make timely deliveries, and in the quality and performance of their products and services. Competition in this sense has different levels and requires that the central purchasing authority have necessary latitude under law to evaluate each aspect of competition and thereby arrive at offers that represent optimum value.

For public purchasing purposes, then, competition may be defined as tenders on the part of qualified vendors to secure the business of a unit of government by offering more favorable price, quality, and/or service.

In principle, competition is the centerpiece around which the public contracting process turns. In its best form, it is a mirror of free and open economy, and when competition is available but is artificially restricted, the principles of public purchasing are defeated.

FOSTERING COMPETITION

The importance of competition demands that acquisitions be made under conditions which foster competition among a sufficient number of potential vendors representing a wide spectrum of products or services and marketplaces. This is a precept upon which purchasing statutes should be anchored. For the most part, laws do not fully convey the spirit of this principle.

Most state and local government purchasing statutes provide that purchases exceeding a stipulated dollar amount be based on sealed competitive bids, with public notice and public opening. Some jurisdictions set a figure by policy or rule. In either case, it is a sound requirement. Purchasing officials and the public alike deem sealed bidding the most impartial method for obtaining competitive bids on the great majority of needs. In addition, soliciting reasonable competition should be the standard also for purchases smaller than the dollar amount required for formal bidding.

The importance of seeking competition at all levels of expenditures becomes more apparent as the minimum dollar amounts governing formal bidding have been raised. In 1973, one state had a $5,000 threshold for sealed bidding publicly opened; eleven had levels from $2,000 to $3,000; and eleven had a $1,000 threshold. In the past 15 years, forty-two states have raised their minimum dollar amounts. One is at $15,000, seven at $10,000, one at $7,500, and fifteen at $5,000. While the impact of inflation is clearly a driving force in these changes, the management of ever increasing workloads has also had an effect.

Below the dollar amount established by law or policy, statutes usually call for purchases to be based on some form of informal bidding or quotation. The instruction is often so general, however, that it becomes almost an option, implying that competition may be sought on the basis of convenience rather than principle.

The promulgation of rules or regulations for small purchase procedures, and adherence to those rules and regulations, are all the more important since, in the last decade, twenty-eight states have raised the dollar amount below which agencies are authorized to obtain their own quotations locally. Percentage wise these increases have been greater than the increases in the threshold for sealed bidding. In the aggregate, "small purchases" constitute a substantial portion of total purchasing transactions and require purchasing management overview. A record of this small dollar amount competition should be required, and be available for public inspection.

Fundamentally, fostering competition is more a matter of attitude than a procedure or mechanism. It is reflected in the way specifications are written, in searching for new sources of supply, in attempting to make bid documents simple and inviting, in communications with using agencies, and in everyday courteousness shown to prospective suppliers and to contractors.

SEEKING ADEQUATE COMPETITION

In terms of good public purchasing practice, adequate competition means more than merely "sufficient" or "enough." Competition is not adequate when known competent suppliers fail to receive equal opportunity to submit a bid or proposal.

Adequate competition cannot be quantified in exact terms, satisfied by the terms "maximum" or "minimum," nor prescribed by a particular procedure. A requirement for maximum competition is administratively impossible if not meaningless, since all potential suppliers can seldom be known. Requiring at least three solicitations or three responses serves as a statement of purpose but at times can discourage seeking competition beyond this minimum. And adequate competition does not necessarily result from contacting only the firms on the bidders' list, or from public announcement of intended purchases. A critical ingredient is that purchasing personnel maintain an awareness of the need for and value of competition.

Procedural requirements such as maintaining lists of qualified bidders categorized by classes of commodities and services and giving public notices of Requests for Bids and Requests for Proposals are helpful in obtaining competition. They need to be supplemented, however, with an understanding on the part of the purchasing staff that adequate competition means seeking responses from known qualified suppliers consistent with the size and nature of the intended purchase, while continuously seeking to add to the list of qualified suppliers by locating new sources.

Purchasing officials are justifiably concerned with increased costs of preparing, printing, or duplicating and mailing Requests for Bids and Requests for Proposals. Arbitrarily limiting the number of solicitations or rotating qualified potential bidders does not address the problem and over the long term can result in higher prices or litigation. More precise management of bidders lists, especially through computerization, and ingenuity and innovation in formatting solicitations, can effectively reduce costs while maintaining competition. Nevertheless, any expense must be borne to support openness and impartiality.

EFFECTIVE COMPETITION

The nature of effective competition varies with the item or service being purchased. If the item or service is to meet the purchaser's design and will therefore be essentially identical from supplier to supplier, effective competition requires bids from only a representative group of responsible bidders. Under these conditions, price competition as represented by the initial or acquisition price is the prevailing competitive element.

If the items are to be produced according to the designs of suppliers, and are not essentially identical in make-up and performance, as in the case of many commercial products, effective competition necessitates soliciting and receiving offers on the different brands available in the market. Under these conditions, competition exists between both products and prices, and economy based on price/performance evaluation of the competing items is the dominant competitive element.

In the procurement of services, and where services are needed in connection with the purchase and use of a product, effective competition requires criteria for the determination or evaluation of the capabilities of bidders or proposers to perform the services called for in the solicitation.

While competitive sealed bidding is the preferred method of procurement, it is not always the most advantageous or practical method of source selection. Price/performance evaluation where price is not the sole criterion, where price may in fact not be the most important of the evaluation criteria, is better served by competitive sealed negotiation or by multi-step competitive sealed bidding. The goal of meaningful competition in achieving the optimum end result in a solicitation is also better served by these methodologies.

Meaningful competition is assured through competitive sealed negotiation when there is statutory provision for the process and the critical elements are carefully observed. These elements are well delineated in the American Bar Association *Model Procurement Code* in Section 3-203, Competitive Sealed Proposals: (1) Conditions for Use, (2) Requests for Proposals, (3) Public Notice, (4) Receipt of Proposals, (5) Evaluation Factors, (6) Discussion with Responsible Offerors and Revisions to Proposals, and (7) Award. The accompanying commentary is very helpful. Negotiation is the driving force of true competition in this process and Step (6) is the key.

A viable alternative, particularly for those jurisdictions which do not have authority for negotiation in their purchasing laws, is multi-step competitive sealed bidding. This source selection is perhaps the best of both worlds bringing a balance between performance competition and price competition. The various scenarios for multi-step competitive sealed bidding are found in Chapter 7.

IMPEDIMENTS TO COMPETITION

Restraints upon competition may come from three general directions — from purchasing policy and practices, from law or government regulation, and/or from activities on the part of bidders and suppliers. The several kinds of restraints are identified here, with some discussed in more detail in other chapters.

PURCHASING POLICIES AND PRACTICES

All public purchasing programs need to examine, correct, and monitor their operations with respect to practices which impair or discourage competition. Some of these practices may be unethical, some of doubtful legality, and, a few, illegal. Most often competition is compromised unintentionally in the belief public interest is being served. Public purchasers ought to realize that if the road to Hell is paved with good intentions, they may be the prime contractors!

Some of these practices, sloppy at best, are bad decisions by individuals: the late bid accepted because it is low, a quantum error overlooked for the same reason, or evaluation criteria not stated in the solicitation becoming the basis of award. Staff training and staff overview are management responsibilities.

But some anti-competitive practices permeate the entire purchasing operation, sometimes even "legitimatized" in policies and procedures documents.

These policies and practices should be analyzed for their effect on competition and for intrinsic fairness. Among practices needing such scrutiny, as reviewed more fully in subsequent chapters, are those relating to:

- Restrictiveness of specifications. Undue restrictiveness often can be eliminated by specifying performance requirements instead of design characteristics or similar detail.
- Letters of intent. When a using agency or the central purchasing office issues a letter of intent to a vendor prior to bidding and award, it gives an unfair advantage to that vendor in the bidding process both as to early delivery and as to implied, if not actual, preference for their product.
- Unlimited multiple awards. Experience has long demonstrated that unlimited multiple awards lessen both price competition and the duty of central purchasing to make competitive product comparison and performance/economy determinations.
- Extending and renewing contracts. If extension or renewal is based upon mutual agreement between the jurisdiction and the contractor, courts see it as allowing a supplier to negotiate without competition. Except in cases of emergency or other conditions where competition can properly be waived, the right to extend, renew, or buy additional quantities under a contract should be at the exclusive right of the government.
- Most-favored-customer pricing. The use of most-favored-customer pricing clauses has the effect of setting artificial floors on prices and of fixing prices at one level. It is anti-competitive and self-defeating.
- Permissive use of purchase contracts. Allowing government units and agencies to order under contracts arbitrarily or capriciously undermines the integrity of public contracts. All parties eligible to obtain their requirements under a purchase contract should be committed to do so at the time of solicitation and be obligated by the award.
- Slow pay. When a jurisdiction fails to pay invoices on time, the cost of borrowing to the vendor discourages competition and may preclude participation by small business.

In-state and local preference are discussed in detail in the following section on impediments imposed upon competition by law and government regulation. Twelve states currently report the existence of formal in-state preferences, with 5% being the typical level of preference established. However, preference may be extended even when it is not mandated by law or rules and regulations. A 1983 survey by the National Institute of Governmental Purchasing, sponsored in part by the U.S. General Accounting Office, reported that about half of the municipalities and counties responding indicated they had informal, i.e., unwritten, policies and practices favoring local suppliers. The response to that survey was somewhat limited, and the response to the broader based *1987 Procurement Survey* of NIGP suggests that about a third of local jurisdictions practice informal preference. Data on the states are not available, but it can be assumed that the practice of giving an informal, in-state preference is not unknown.

Public purchasing officials should be aware of possible actions on their part which could be construed as restraint of trade or, otherwise, as antitrust violations. As already suggested, rotation or limitation of bidders lists may be found to be such a practice. Certainly the practice of "informal" constituent preference is likely to be challenged. This is a complex area of law which has not yet been fully examined but the world grows litigious.

There are other well intended actions which are possible violations: purchasing officials of different jurisdictions adopting, as a group, standards or specifications which questionably rule out certain products, or agreeing not to do business with a particular firm. This entire area has been further clouded by a 1982 United States Supreme Court decision holding that actions of political subdivisions of states can be subject to antitrust scrutiny unless the subdivisions have been expressly provided immunity by state legislation.

LAW AND GOVERNMENT REGULATION

Laws and government regulations that impede competitive bidding increase or decrease according to the times. During the 1950's so-called "fair-trade laws," under which manufacturers were permitted to fix resale prices, prevailed in most of the states and were responsible for widespread identical bidding. In some instances, they allowed the effective control of prices of entire industries, such as scientific and laboratory apparatus and audio-visual equipment. In states without fair trade laws, or which provided exemption for purchases by government agencies, such pricing was unlawful. Public purchasing officials and public attorneys established programs in the early 1960s for reporting identical bids, and with the help of consumer groups the laws were eventually declared unconstitutional or repealed. While this was taking place, however, fair-trade advocates sought to have a similar federal law enacted under the label of "quality stabilization," which was narrowly defeated by Congress.

Clearly this was an example of the beneficial impact of concerted action by the public purchasing community (with help from its friends). More remains to be challenged.

As early as 1954, state purchasing officials spoke out against in-state preference statutes, under which monetary preference in the form of a percentage of price must be given to bidders located in the state or to goods produced

within the state. Typical of all barriers to free competition, this results in benefits for a few at the expense of the general public. A 1986 study by Craig and Sailors, Department of Economics, University of Houston, found "that percentage preference laws significantly increase state expenditures over what would otherwise be expected, by about 3% in real terms per capita." This study, and others, can only hint at the chilling effect of constituent preference upon competition and unrealized savings.

At present twelve states have percentage in-state preference laws. At least three quarters of the states have statutory language indicating, often ambiguously, that some preference should be extended. This is usually interpreted as applying preference only in the case of tied bids. State purchasing officials would be more comfortable if all reference to in-state preference was expunged.

The *1987 Procurement Survey* of the National Institute of Governmental Purchasing indicates that about 30% of the members responding have a legal requirement for resident preference (as high as 40% for construction services among municipalities). There appears to be a correlation between size and type of jurisdiction and the frequency of preference ordinances — small cities are the most likely to impose such requirements.

The force behind resident preferences in public purchasing is political. As a matter of economics, the practice is a subsidy that is costly to the taxpayers. As a matter of law, the practice may be a violation of the constitutional prohibition against interstate tariffs. As a matter of public purchasing policy, the practice discourages competition and weakens the principles of competitive bidding. Public purchasing officials remain opposed to resident preferences except where no sacrifice or loss in price or quality would result.

A few jurisdictions have a type of law or rule that acts as a combination resident-preference and most-favored-customer pricing practice. In essence it provides that if a low bid is submitted by a non-resident firm or on a non-resident product, award may be made for purchase of a resident product at the same or lower price. Action of this kind is a deterrent to competition, violates fundamental principles of competitive sealed bidding, and should not be permitted.

Along with in-state preference there are a number of statutorily mandated preferences of long standing among the states. These are preferences, usually absolute, for the products and services of workshops for the blind, sheltered workshops, and prison industries. The first two on the basis of modest scale and demonstrable social need have general acceptance in the purchasing community. Until recently, state use laws were not always followed, but changes in corrections philosophy have led to vigorous promotion of prison industry sales. Where central purchasing has the authority to set specifications, i.e., quality and approve sales prices, the customer agencies are better served even if competition is diminished.

But, along with these "historic" preferences, the past decade has seen alarming growth in other types of preference. Some are simple protectionism, e.g., Buy American Acts, preference for U.S. Manufactured Steel, or other industry group preferences (printing, clothing, construction). Some attempt socio-economic goals through public purchasing, e.g., small business preference, Minority Business Enterprise and Women Business Enterprise preference, or labor area legislation.

Like resident preference laws, the force behind these efforts is political. Unfortunately, from the standpoint of public purchasing and its customers there has been little substantive demonstration of program effectiveness, but a clear indication of increased administrative costs and a limiting of competition. Worse, unrealized (and unreasonable) expectations result in undeserved criticism of the purchasing program.

Local units of government do not have many of these policy-directed preference ordinances. Here the correlation of size and type of jurisdiction and the frequency of preference ordinances is with the larger municipalities and counties.

All states and the federal government have regulatory bodies which exercise controls over the operations and pricing of certain industries and services. Among these industries are transportation, utilities, and insurance. In some of these, monopolies are granted which nullify the normal processes of competition. The recent trend toward deregulation, e.g., natural gas, telecommunications, affords public purchasers the opportunity to apply procurement strategies which restore competition.

Where purchasing statutes and rules fail to provide for confidentiality of certain kinds of information, or where open records laws prohibit confidentiality, there can be a barrier to competition. Many prospective bidders consider some information about their financial condition and about characteristics of their products, manufacturing processes, and other technical data, which purchasing may need for evaluation purposes, to be privileged information or trade secrets. Unless the purchasing office has authority to maintain confidentiality of certain kinds of information, companies often will not supply it or will not bid at all. The law should recognize that public competitive bidding should not be used as a means for firms to obtain information about competitors not otherwise normally available, and should provide for limited confidentiality within the purchasing operation.

In authorizing confidentiality of data, either law or rule should require that the decision as to data to be so treated shall rest with the chief purchasing officer, not with the firm which submits the information.

In view of costly and harmful effects, though not intended, that legislation can have on the public contracting program, it is beneficial to have a method whereby central purchasing can routinely be informed of proposed legislation or administrative policy that will have an impact on business, so that it has opportunity to offer comments as to any effect the proposed policy or legislation will have on the purchasing process.

ANTI-COMPETITIVE PRACTICES BY BIDDERS

The principles and rules of public contracting are predicated on a competitive market. Yet, purchasing officials have a formidable task in seeking to assure that competition for government business is free from anti-competitive actions on the part of sellers. Unlike government decisions which are made or announced publicly, suppliers' decisions to act in restraint of trade are illegal and are made secretly. They are extremely difficult to detect, and even when suspected on the basis of credible evidence they are unwilling to divulge the actions. Two highly useful handbooks to help public purchasing officials deal with anti competitive practices are *Impediments to Competitive Bidding*, published by The Council of State Governments in 1963, and *Government Purchasing and the Antitrust Laws*, published by the National Association of Attorneys General in 1977.

The ABA Model Procurement Code Project Staff has compiled for the American Bar Association publication, *Identifying and Prosecuting Fraud and Abuse in State and Local Contracting* (1984), a listing of corrupt practices in public procurement and contracting. The MPC staff sees some of these practices as not necessarily sins of commission or omission per se, but as indicators of possible occasions of sin to which a prosecutor should be alert. (The reader is reminded of the earlier observation that integrity is the principal stock in trade of the public purchasing official and that even the slightest appearance — indicator — of possible fraud or abuse does irreparable harm to that stock.) The ABA study points out that the abuse of competition may have serious legal as well as economic consequences.

Some of the concerns identified in the ABA study have already been addressed in this chapter: restrictive specifications, permissive use of contracts, and slow pay. The study points out other anti-competition practices where the public purchaser is the principal or a partner: cumulative small purchases to circumvent competitive bidding, contrived "emergency" purchases or sole source procurement when competition is known to exist, discriminatory bidder pre-qualification, and excessive bonding.

However, *Identifying and Prosecuting Fraud and Abuse in State and Local Contracting* is principally concerned with anti-competitive practices by bidders and contractors, i.e., collusive bidding, bid-rigging, and price fixing.

In a free enterprise economy, a business depends upon profit not only for health and growth, but for survival. The necessity and quest for profit lead to the desire to control the amount of goods or services that are available, exclude competition, and fix prices. Anti-competitive activities are likely to result in criminal or civil action upon discovery. Purchasing officials should seek the advice of counsel in attempting to resolve antitrust problems, and to the extent appropriate obtain the help of the offices of the state and the United States attorneys general.

Federal and state antitrust laws are intended to protect the market from price fixing and other restraints of trade and from monopoly power. Restraint of trade includes numerous forms of agreement or conspiracy to divide the market among the parties or to set prices at artificial levels.

Oligopoly

Oligopoly is a condition under which a few sellers can control the market for a particular product or type of product. It can be found in a wide variety of product areas, such as scientific apparatus and instrumentation, business equipment, and pharmaceuticals. Depending upon individual market strength, these sellers can exercise commanding influence over product specifications and the terms and conditions of conducting business. Agreements or conspiracies among such sellers have the effect of a monopoly.

A strong movement during the 1980s which has accelerated the pace and number of corporate acquisitions and mergers suggests the incidence of oligopoly is increasing.

To the public purchasing official, one of the most burdensome effects of oligopoly is the effort of sellers to dictate the terms and conditions of doing business, and refusal to alter or modify them or the company policy on which they are based. This is often accompanied by contentions of the sellers that competitive bidding is somehow anachronistic, and by their efforts to encourage purchasing practices that are loose, if not illegal, such as negotiated "schedule contracts" and "unlimited multiple awards." Some dictated contracts go so far as to abrogate the basic vendor warranty established under the Uniform Commercial Code; i.e., that the merchandise is suitable for the ordinary purpose for which it is to be used.

In facing these problems, purchasing officials are frequently forced to compromise the public interest, and they should press legal authorities to investigate for antitrust violations. In addition, they should urge their professional associations to go on record sharply opposing such tactics. In their individual responsibilities, they should insist upon competitive bidding, modify requirements where possible to admit additional products, and continuously search for new sources of supply.

Identical Bids

Identical bidding is the most obvious form of noncompetitive pricing. Since the repeal of fair trade laws it is not as commonly encountered as it was for many years. Identical bids may result from a number of causes. One is geographic pricing, usually based on equalizing transportation charges to meet competitors' delivered prices. These pricing systems may involve: calculating delivered prices from specific set points, such as major manufacturing areas or the location of the vendor closest to the buyer; charging one price within a geographic zone, which may comprise several states or only a part of a state; or charging one price throughout the United States.

Other identical bidding comes about where several distributors of the same manufacturer's products adhere to price maintenance agreements, such as exclusive distributorships, or must follow "agency" agreements whereby distributors serve as the manufacturer's agent, receive the manufacturer's goods on consignment, and quote the selling price dictated by the manufacturer.

A manufacturer may agree with his distributors and dealers, or require them by contract or as a condition for carrying the item or line of merchandise, to sell the item at a price set by the manufacturer. This form of agreement is illegal if the distributor or dealer has title to the item.

Establishing a resale price is not illegal if the distribution outlet is owned by the manufacturer, or if the sale is through his own employees. Legality is questionable where the manufacturer sells through an independent distributor or dealer but furnishes the merchandise on consignment, retaining title until purchased by a consumer. Resale price maintenance can cause identical bidding if two or more manufacturers have agreed on the resale price of a like item or if several dealers are bidding on the same brand. Any appearance of resale price maintenance should be investigated. It is likely to involve an agreement that is a violation of the Sherman Act and of the state antitrust statute as well. Purchasing officials need to be familiar with the market and pricing practices of a given product to accurately analyze bids and determine the forces which are operating to cause non-competitive pricing.

The Robinson-Patman amendment to the Clayton Act generally prohibits price discrimination. Bidders often cite this as requiring them to offer the same prices to all customers. Until recently the public purchaser could inform the bidder of the U.S. Attorney General's opinion that the law is not applicable to government contracts. (See Federal Trade Regulation Reporter (1961), Chicago: Commerce Clearinghouse, Inc., par. 3275.)

This defense, however, has been altered. The *Boulder* and *Jefferson County* cases made it clear the Supreme Court saw Robinson-Patman applying to local jurisdictions, at least those not under the umbrella of a state law which would provide exemption. *Jefferson County* ruled that the supplier could not offer lower prices to a government than to other customers where the products were for resale. However, this decision leaves undecided the question of pricing when a purchase is made for a jurisdiction's own use. The Court indicates resolution of this matter lies with the Congress.

There is no question the courts have diminished government's sovereign immunity and hold that governments may be liable for anti-trust violations. Where the purchaser encounters any question in this regard, advice of legal counsel is imperative.

A practice that encourages a single government price at an artificially high level is use of a most-favored-customer pricing clause, particularly by the Federal Supply Service of the General Services Administration. Sales to state and local governments are not properly excluded from the effect of the clause. Evidence is overwhelming that the clause operates as a deterrent and impediment to competitive bidding. The lack of clarity in, and ambivalent attitude toward the most-favored-customer clause constitute a disservice to public purchasing and an unnecessary burden on the taxpayer.

Identical bidding is not always the result of conspiracy or economic power. It can be caused by government price regulation, state and federal, or by administrative practices. And it can occur by chance or by coincidence. When it is a result of agreement among sellers, however, it will remain a useful tactic only as long as the method used for making awards divides the government's business in a manner that is profitable to the conspirators. Even bidders who are not part of an anti-competitive conspiracy may detect that the government's business will be divided among them when low identical bids are submitted, and may tacitly develop a system whereby they submit low identical bids. Consequently, all identical bids may be considered the sign of a possible anti-competitive conspiracy or the seeds of such a conspiracy; but whether conspiratorial or not, the effect on the buyer is essentially the same. Methods for combating identical bidding is discussed under "Countermeasures."

Collusive Bidding

Wherever collusive forces are working in the market, the objective of the conspirators is almost always to divide the market among themselves. In public bidding, direct division of the market is usually sought in one of three ways: bidders rotating low bids among themselves, allocating business according to customers, or allocating business by territory or geographical location. It is virtually certain that a great deal more of this takes place, at high cost to the taxpayer, than is known or suspected.

Some industries seem to have a historical bend toward these activities. Among them are the bakery industry, electrical manufacturing and contracting, and asphalt suppliers. All have gone through significant anti-trust cases.

There have been large-scale revelations of collusive bidding in the field of highway contracting with evidence that the bid rigging has been a nationwide practice. Evidence further indicates it has been widespread for some 25 years or longer.

The heavy cost of anti-trust violations, in money and in damage to the purposes of public contracting, cannot be accurately calculated.

COUNTERMEASURES

Combating anti-competitive practices requires perception, motivation, and follow-through. The work can be separated into several areas. One is to seek correction of impediments to competition that stem from current purchasing statutes, rules, regulations, philosophies, and practices or procedures. Another is to inculcate in purchasing personnel the spirit of fostering adequate, effective, and fair competition.

In the matter of anti-competitive activities on the part of bidders, purchasing officials need to be more discerning and take more initiative. Apparently many purchasing officials feel the attorney general, district attorney, or other public counsel have all the responsibility for gathering evidence for anti-trust actions, and the purchasing office should supply information only when it is requested. Some purchasing officials inform prosecutors when they suspect collusive actions, but not many do so with adequate documentation. In turn, the attorney general and other prosecutors need to act forcefully. Anti-trust law is tedious and time consuming and, unfortunately, very few jurisdictions have developed strong programs. It is an area that demands more attention and effort by purchasing and legal authorities alike.

The more evidence there is that a violation of law has occurred, the more likely enforcement authorities will allocate resources for investigation. With respect to anti-competitive activities, the purchasing official has raw data, and although a violation may not be apparent as the data are generated, it is in the interest of the competitive bidding process that the material be developed and provided to appropriate authorities in a form that can be analyzed, and violations can be determined.

Identical bidding can be opposed effectively by actions of purchasing officials. To do so, however, the purchasing statutes and rules need to provide central purchasing with substantial flexibility to make awards in a manner to discourage such bidding. Absent this, methods used frequently by public purchasing programs in making awards of tie bids perpetuate the practice, such as rotating awards, drawing lots, or flipping a coin; these play directly into the hands of the identical bidders whose purpose is to have the government's business divided among them.

Instead, central purchasing should be authorized by law to make awards "on any reasonable basis, subject to governing rules and regulations, intended to prevent identical bidding," and in instances where that does not provide a solution, "to reject all bids and negotiate a more favorable purchase."

Written guidelines should be developed setting forth procedures and techniques to be used under this grant of authority. The following methods of dealing with the problem have been used successfully:

- Determine which of the low identical bidders submitted the most technically correct bid, or whose past performance has been superior. Make the award accordingly, and make subsequent awards to the same bidder as long as identical low bids are received. This procedure eliminates the government's complicity in the anti-competitive scheme because the market is not divided among the identical bidders. The strength of this method is that it gives the other bidders economic incentive to submit competitive bids, and the Attorney General of California has ruled that such continuous awards represent award to the low bidder because costs are involved in changing suppliers.
- Circumvent the effect of price maintenance agreements by inviting bids on a package that includes price-maintained items. Awards are then made to the bidder who submits the lowest price for the total package. Under this type of bidding, suppliers frequently can lower their bids on items that are not covered by agreement by an amount that reflects a discount on the price-maintained items.
- When identical low bids include delivery charges, make the award to the identical bidder located farthest from the delivery point and who has the highest transportation cost. (In multiple delivery point contracts, this method should not be used to the extent it would divide the market among the identical bidders.)
- Reject all bids and issue a new Request for Bids with a cover letter stating the previous bids were identical and unacceptable, referring specifically to any state or federal law that may be pertinent to the particular instance.
- Purchase seasonal items during the off-season. Some purchasing agents have found that identical bids tend to be submitted on some types of items during the time they are in greatest demand.

Where identical bids are received from firms both within and outside the jurisdiction, it is acceptable to make the award to the resident bidder, who in fact can be considered to be the low bidder due to some indirect taxes, at least, accruing to the jurisdiction from the award. Where the tie bidders are within the jurisdiction, as a general policy the most effective method is to make the award continuously to the same bidder if pursuit of legal anti-trust measures is not practicable.

DETECTING CONSPIRACY

Anti-competitive practices can be cleverly concealed. Conspirators hide their actions by agreements that take several forms. There have been agreements to sell items at the same price, to use intricate formulas to determine the price each conspirator will bid, to follow coded communications on price changes, to predetermine the contents of conspirators' bids, and to refrain from bidding on certain contracts. Some anti-competitive agreements, such as using formulas to set the amount to be bid, may give every appearance of actual competition. Other types of agreements may result in bid prices that fall into a distinctive pattern, but unfortunately for the purchasing official who is attempting to detect collusion, the same result may occur from practices which usually do not violate the letter of the law. In some product areas, for example, suppliers will use follow-the-leader pricing and make the same price changes at approximately the same time, based on whatever the dominant seller does.

The purchasing official's best means of detecting anti-competitive practices are by monitoring the bids submitted, keeping eyes and ears tuned for unintentionally disclosed indications that an agreement is in effect, and using his knowledge and insight of costs, products, and markets to recognize suspicious activity.

FIGURE 1
Sample Bid-Award History File
ITEM X

Vendor	Costing Data	1976	1977	1978	1978	1980	1981
A	Unit Price($)	42	41	40+	43	43	41
	Est. Cost($)	4,200	8,200	12,000	17,200	21,500	24,600
B	Unit Price($)	41+	42	42	41+	41	43
	Est. Cost($)	4,100	8,400	12,600	16,400	20,500	25,800
C	Unit Price($)	43	40+	43	42	40+	42
	Est. Cost($)	4,300	8,000	12,900	16,800	20,000	25,200
D	Unit Price($)	47	47	46	46	45	NB
	Est. Cost($)	4,700	9,400	13,800	18,400	22,500	—
E	Unit Price($)	NR	48	47	47	46	45
	Est. Cost($)	—	9,600	14,100	18,800	23,000	27,000
F	Unit Price($)	NS	NS	48*	48	47	NB
	Est. Cost($)	—	—	14,100	19,200	23,500	—

NS = Not solicited
NR = No response
NB = "No bid" response

\+ = Successful bidder
* = Bid from bidder who was not on bid list at time of solicitation

Establishing a Bid-Award History File

Monitoring the bidding process requires systematic, long-term effort. In setting up a record-keeping system to assist in detecting collusion, bid-award data should be gathered and recorded in a usable format that considers the realities of the market involved. The number of items encompassed by any one analysis should be determined by the specific market in which evidence of collusive bidding is being sought.

The bid-award record should show, at a minimum, the suppliers that were solicited, the amounts bid, the numbers of no-bids and no responses received, and the successful bidder. In a multi-product market and for indefinite quantity term contracts (e.g., pharmaceuticals), the information should be modified to show the estimated value of the award that each bidder received, as well as the value of the total award, to reveal patterns in the percent of the market that each bidder received. If there is a predominant item in a multi-item market, as might be the case where 40 percent of the total drug expenditures is spent on a single item, keeping a separate file on that item would be important. In fact, in a multi-item market, patterns in awards could probably be detected by charting several key items individually. An example of a bid-award history file is shown in Figure 1.

Maintaining the Bid-Award History File

With proper planning, a bid-award history file can be easily maintained. Initially, commodity codes can be refined so that when an award is made, the proper bid-award history may be found quickly by the commodity code reference. Work-saving devices can be used to reduce manual copying, the most time-consuming element, for example, bid forms (or additional forms) for bidders to fill out can be designed in such a manner that a bid-award history file is produced by assembling and photocopying them. Most advantageously, after a bid-award file system has been developed and tested, it can be easily computerized, and software packages are available for analyzing the data.

Analyzing Bid-Award Data

A bid-award file should bring together the information on awards for one product area or business area so the data can be studied for patterns that may point to anti-competitive conspiracies. For example:

- Patterns in rotation of low bids among competitive bidders can be detected. If bidders are involved in a collusive anti-competitive agreement, the record might show that, although the bids appeared to be competitive for each individual procurement, the awards fell into a suspicious pattern (e.g., B-C-A; B-C-A, as shown in Figure 1).
- Patterns in geographical distribution of awards can be detected for commodities for which awards are made by region. A map can be used to portray such patterns by designating a color for each bidder and filling in the county or region affected by a contract with the color of the successful bidder.
- No bid responses from solicited bidders may reveal a pattern which could be a signal that suppliers have agreed to take turns in bidding on contracts. This practice may be more likely where items are available from only a limited number of suppliers.

Other suspicious patterns can be detected through the purchaser's knowledge of the market. If normally there were a substantial markup from wholesale to retail prices for an item, but if the bidding in normal market conditions repeatedly resulted in low bids that were only slightly below retail prices, further inquiry would be in order. The bid-award history also may mark the approximate time a conspiracy began by showing a sudden change in bidding pattern, e.g., suppliers might be seen as changing their pricing policies on bids for a new contract, or identical low bids might begin to appear consistently where previously this had not been the case.

When identical bids are received, the purchasing office can focus on certain factors in the bid-award history file for indications of collusion.

- Commodity and market analysis. Is there any legal basis for the identical bids? Are all bidders offering the same manufacturer's products? (If so, the specifications might be unduly restrictive, or there might be a resale price maintenance agreement between a manufacturer and the distributors.) Is there some peculiarity in the present market, such as temporarily limited sources of supply, that has affected the bidding?
- Number of bidders. How many bidders responded to the Request for Bid? Are the identical bids the only ones received? If several bids were received and only two were identical, one might correctly assume they were identical by coincidence unless the identical bidders are the dominant suppliers in the market. Additional analysis and observation of future bidding on this item are represented, collusive price maintenance agreements are a possible cause.
- Number of items involved. Does the bid relate to a single item or delivery point, or are there numerous items and delivery points? If multiple delivery points are involved, are the bids identical for each? Are unit prices identical for each item?
- Historical bid prices. Are there discernible trends or patterns? Has there been a history of identical bids either for the items involved or with the bidders involved? If identical prices were bid in the past, were awards made by a method that may have encouraged, rather than discouraged, continuation of the practice? What changes in method of award could stimulate competitiveness?
- Price analysis. As appropriate, an independence price analysis should be made as a test of the reasonableness of bids received. Catalogs, market surveys, prices being paid by other users, and similar indicators should be considered.

The conclusions reached from such analyses will help the purchasing official decide actions that purchasing can take to combat the practice and can provide useful information for the attorney general's or public counsel's office.

A bid-award history file offers a unique asset that facilitates analysis and helps to determine if there is evidence of collusion. It can also present other information beneficial in managing the purchasing system. For example, the number of responses to bid invitations and the degree of competition over a period of time are readily apparent, as is the incidence of bids from suppliers who were not on the bidders list. Price trends for various items are indicated. The frequency of awards to other than the lowest bidder and the items on which this occurs will be shown. In addition, making slight variances in the format of the bid-award history file can supply other important information to serve management needs.

COORDINATION BETWEEN CENTRAL PURCHASING AND THE ATTORNEY GENERAL

Combating collusive bidding practices calls for an effective working relationship between the central purchasing office and enforcement authorities. If a prosecutor becomes involved in an anti-trust suit, he will need, as evidence, records of past bidding patterns and practices. The following information, important in an anti-trust suit, is generally found in historical purchasing records: public notice of the proposed purchase, names of the bidders who were solicited, bidders who responded, the price each bidder offered, and the name of the successful bidder.

The enforcement authority should have a voice in determining the number of years purchasing records are kept in order to provide adequate historical data needed as evidence of collusion. In addition, the authority should work with central purchasing on a plan for retrieving the information without unduly disrupting purchasing operations.

Because actions taken by the enforcement authority often have a salutary effect on all purchases, there should be a format and system established whereby purchasing officials can report to that office instances of suspected collusive bidding. Communication from the enforcement authority's office to the purchasing agents through seminars has proved successful where instituted. The seminars examine anti-trust laws and how they affect public purchasing, how to deal with suspected anti-trust violations, and what cooperative procedures are possible between the purchasing function and the enforcement authority. The National Association of Attorneys General publishes an Antitrust Report which summarizes state anti-trust cases, their current status, and their final outcome. This report is an excellent source of information for public purchasing officials.

COORDINATING STATE ANTI-TRUST EFFORTS

Long-range improvements in combating collusive bidding involve the systematic accumulation of data according to states, regions, and the entire nation. Computerized experiments of this kind have already begun and the technology and applications can be expected to grow. In the process, state and local government purchasing programs will need to be able to generate data adaptable to specific formats and computer compatibilities.

A ruling by the U.S. Supreme Court in 1977 has adversely affected the ability of purchasers to recover damages from anti-trust violators. In a case popularly know as "Illinois Brick," the Court held that damages may be recovered only from a direct seller and not, for example, from a manufacturer if the purchase is made from a distributor or dealer. Efforts to date to overcome the effect of the decision have generally not been effective. The ruling continues to inhibit actions to recover damages, with a final remedy apparently requiring legislation by the Congress. Some states have adopted "Little Illinois Brick" legislation as an in-state remedy. As yet these laws have not been tested in court.

Also, purchasing officials need to be alert to a new movement by some economists and business interests to proclaim that anti-trust laws are obsolete. The argument is that the natural marketplace provides sufficient competition to prevent excessive pricing, and that prohibitions against combinations and price dictation are not needed. Purchasing experience, clearly does not support such views or reasoning.

OTHER COUNTERMEASURES

Varied policies and practices can be employed to assist the purchasing system in countering anti-competitive practices. Many state and local governments require all bidders to submit signed statements that their bids are made independently and without collusion with other bidders. Some systems require separate notarized statements of non-collusion. These requirements serve as affirmation by bidders that they have not participated in a collusive or anti-competitive agreement and remind them of the jurisdiction's concern that the bids be the result of true competition. Such certifications need to be enforced with specific statutory provision, such as conspiracy or collusive bidding statutes, which set forth penalties for collusive practices.

Simple direct action can be one of the best tools for dealing with collusive bidding. When collusion is suspected, concentrated effort to recruit new bidders can achieve realistic prices as reaction to the new competition. Taking the initiative to make inquiries of suppliers who appear to be outside of a suspected anti-competitive conspiracy has provided information which was valuable in taking action against the conspiracy.

Inquiries can be made to determine why a major firm, that normally would have bid on a large contract, did not do so. If the reasons given are unsatisfactory, if the practice of not submitting bids persists, or if a pattern of several bidders' refraining from submitting bids on successive contracts is detected, the purchasing official should take further action. The purchasing official could, for example, compare his/her records of awards with those of his/her counterparts in neighboring jurisdictions to see if there were evidences of market allocation. When a firm is suspected of refusing to bid because of participation in an anti-competitive conspiracy, the purchasing office should not routinely remove the firm from the bidders list. On the contrary, it should assure that the suspected firm is always solicited, to create a record of the firm's refusal to bid. This type of information can be useful in any subsequent anti-trust action.

An unusual reduction-in-competition problem can arise from anti-trust enforcement. When collusive bidding is discovered to be the general practice in a particular industry, as occurred some years ago in the electrical cases and more recently in highway contracting, and the supliers thereby are found to be non-responsible, prospective bidders and competition on existing and immediate future needs can be effectively eliminated. The solution to this dilemma is not easy. Experience to date suggests one answer is monetary penalties, individually imposed on each violator on relation to his complicity and the effect of it, as a condition for reinstatement from debarment.

Overall, the strongest deterrent against collusive bidding continues to be active cooperation between alert purchasing officials and a prosecutor's office that attacks the problem aggressively.

ADDITIONAL METHODS FOR IMPROVING COMPETITION

Purchasing laws, policies, and rules must recognize that procurement often has to be conducted under abnormal conditions. Collusive bidding and other non-competitive practices are examples. Another is a market in which a commodity or group of commodities is in short supply and availability and prices are extremely volatile. In such a market, it is difficult, and at times impossible, to use the purchasing procedures geared to a normal, competitive market. There are ways to cope with abnormal markets, but purchasing officials need the authority to apply these techniques lest they violate the law or simply conclude the purchase cannot be made.

To avoid any misunderstanding, it must be made clear that purchases will be made by normal competitive means whenever possible. Unusual market conditions are not routinely a basis for deviating from this principle. In those cases where it is impossible to follow established competitive bidding procedures, the purchasing actions must be documented to show the condition that prevented it and procedures that were followed. Different means can be employed by purchasing agents to meet different market conditions, and success in their use will vary according to the severity of the market circumstances.

SHORTER TERMS AND DEFINITE QUANTITIES

Term contracting is an accepted way of buying that is widely used in public purchasing. The contracts usually are for a period of one year and frequently are for indefinite quantities. In a tight market, however, suppliers often are unwilling or unable to commit themselves for this length of time, or for indefinite quantities. Some jurisdictions have succeeded in continuing to use term

contracting by offering shorter contract periods and/or more definite quantities. Except for additional administrative time, shorter-term contracts usually retain the advantages of the one-year contracts. Using definite quantities poses some problems because estimating exact requirements in advance is often difficult, and underpurchasing or overpurchasing is always a possibility. The former condition can be alleviated by making individual purchases as needed, although prices paid on such spot purchases likely will be higher. If requirements are overestimated, it may be possible to cancel some of the deliveries, particularly in a market where prices are rising. If not, the additional quantities will be subject to additional costs of storing and handling.

PROVISION TO RENEW

Options to renew a contract are sometimes seen as a protection in a market of rising prices; however, this often is not the result. Furthermore, depending upon the manner in which contracts are renewed, the practice could be in violation of requirements for competitive bidding. Any provisions, even though set out in the Request for Bids, that would result in renewal by mutual agreement between the jurisdiction and the contractor, or renewal at different prices not in accordance with explicit conditions allowing price adjustments, are suspect and are not sound practice. On the other hand, and in keeping with the integrity of the competitive bidding process, renewal of a contract is entirely in order where market conditions warrant and where the Requests for Bids provide for renewal at the option of the state or local government under the same contractual terms and conditions and at the same price or price basis.

PRICE ADJUSTMENT

In an inflating economy or at any time prices are unstable, price adjustment provisions are a useful means for stimulating suppliers to bid on indefinite quantity contracts, without padding or hedging their prices. These clauses provide for price increases and decreases under certain stated conditions. The conditions and procedures must be set forth in the Request for Bids, and should be clearly defined and strictly adhered to.

Price adjustment clauses can be governed by different considerations and market factors, and the detailed procedures and requirements can vary from contract to contract. Generally, however, they should specify: the period of time during which the provisions are operative, the conditions under which the clauses may be exercised, the general types of increases that will be considered, the method of determining that a price increase is in order, and the documentation, review, and approval procedures required. Oftentimes, the contracts provide an initial 60- to 90-day period during which the bid prices must remain firm against any increase. The clause can place a limit on the amount by which the contract price may be increased. In all cases, there should be provision for the jurisdiction to cancel the contract if a requested price increase is not acceptable. Any request and justification for a price increase should be linked to an indicator, preferably an independent index not controlled by either the buyer or the seller. The nature of the index needs careful examination if it could be subject to falsification or rigging. In some cases, adjustments can be based on the vendor's published prices where it can be shown that any changes apply alike to all customers. In industries where labor represents a major part of contract costs, such as coal, price increases are sometimes allowed based on negotiation of new labor contracts. In any case, price adjustment clauses should provide that suppliers submit necessary data supporting a request for price increase, and the purchasing office should be authorized to evaluate the data with the right to examine the supplier's pertinent books and records, if this is deemed necessary. The clauses should specifically state that no adjustments will be made to compensate a supplier for inefficiency or for errors in judgment, that only valid cost increases will be allowed, and that increase in percent or basis of profit will not be permitted.

As a general rule, price adjustment provisions can be used in complete conformity with the competitive bidding requirements. Overall, when well conceived and properly administered, they can afford a valuable means for attracting greater competition, for effecting savings, and for protection against hedged or inflated prices being submitted on bids for indefinite quantity or other types of term contracts.

VENDOR APPEAL PROCESS

Another deterrent to anti-competitive practices is the creation of a vendor appeal process. Vendors need to be given the opportunity to appeal both at the point specifications are issued, and shortly after the award decision is made. Vendor input can help identify potentially restrictive specifications, and improper bid evaluation methods. A secondary review of specifications, and bid evaluation practices, handled administratively, can quickly identify elements of the purchasing process that might unintentionally limit competition.

5. Planning and Scheduling

ESSENTIAL ELEMENTS

Suggested Statutory Coverage

The purchasing statute should:

Direct the central purchasing office to establish and maintain a procurement management information system and a management analytical process based on the information system.

Require using agencies to submit data on requirements to central purchasing, as designated by rule, and grant specific authority to central purchasing to require justification of purchase requests.

Require that central purchasing establish and maintain an ongoing program of consolidation of requirements wherever practical and to use scheduled purchasing and term contracting techniques as appropriate.

Authorize multi-year contracts, subject to availability of funds, specifying that the term of the contract must appear in the solicitation for bids or proposals.

Authorize any type of contract except the cost-plus-a-percentage-of-cost contract.

Require that contracts for rental, leases, and lease/purchase be subject to the regular requirements for competition.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Cover term contracting procedures and practices, including requirements for mandatory use of the contracts and methods of monitoring compliance.

Cover planning and scheduling, relating specifically to the data requirements of central purchasing, i.e., the data needs from using agencies, the scheduling and timing of activities, and the respective areas of authority, responsibility, and liaison.

Recommended Practices

Purchasing should participate in overall government management planning in those areas to which it can bring knowledge and expertise.

Purchasing should employ data from budget documents and surveys of vendors as well as using agency requirements in carrying out planning and scheduling.

The central purchasing information system should be compatible with existing financial management information systems.

Since economy of scale is finite, cost saving analyses should be conducted to determine where volume buying is cost-effective.

Central purchasing should issue guidelines on the applicability of cost principles under certain types of contracts.

Increasingly, government is confronted with the challenge of meeting the needs of constantly changing social and economic environments. Replacing old ways with improved techniques and developing and implementing new programs all contribute to a greater need for thoughtful planning. Emphasis on planning, from both management and operations points of view, is intensified by the growing demand that government at all levels conduct its operations more efficiently and economically. Planning is an essential ingredient for strengthening the management of public resources and obtaining increased value from the expenditure of taxpayers' dollars.

Planning and scheduling relate largely to anticipating future needs, devising programs to meet these needs, and arranging for the acquisition and use of necessary resources. Purchasing needs to be closely involved in these aspects of governmental management and operations.

Unfortunately, purchasing often is seen as exclusively a service agency that can make no significant contribution to management objectives of government. Where this view prevails, purchasing has no opportunity to participate in managerial planning processes. This chapter will demonstrate that management benefits when it obtains information and advice from purchasing, and that purchasing can fulfill responsibilities more effectively as a result of this kind of involvement.

AT THE MANAGEMENT LEVEL

Virtually all decisions made by state and local governments affect purchasing and materials management, and conversely, all purchasing decisions affect program activities. Therefore, purchasing should participate in the early stages of management planning. Purchasing can, for example, contribute vital information on forecasting the costs of commodities and services necessary to specific programs. Purchasing's knowledge of market conditions, materials availability, and technological advancements can provide pertinent information important to the feasibility, practicality, cost-effectiveness, make-or-buy decisions, timing, and other planning considerations and objectives.

Similarly, purchasing should be called upon to participate in the planning of buildings and facilities. The design of medical, social, recreational, and administrative centers requires forecasting for the acquisition of operating supplies, furniture and fixtures, fuel, equipment, machinery, and countless additional items. Including purchasing in the early planning stage contributes to the accuracy of projected costs and to developing realistic construction schedules for delivery and installation of equipment and machinery.

Government managers at all levels should learn to draw upon the expertise of purchasing as a part of their planning procedures. In turn, purchasing improves its effectiveness from such involvement by gaining valuable information and insights regarding administrative directions and trends. Long-range plans can be translated into future requirements, workloads can be scheduled more efficiently, and attention can be devoted to acquisition strategies that are most appropriate for current and future market conditions. Purchasing should have a management responsibility, shared with the central budget unit, to review the validity and suitability of purchase requests and to obtain adequate program information and justification from using agencies. The valid exercise of this function requires statutory or other legal authorization.

AT THE OPERATIONS LEVEL

Beyond participation in broader management planning, purchasing needs a structured program of planning and scheduling for its own operations. Important to sound purchasing programs, and requisite to a superior one, is systematic decision-making in the timing of purchases, the methods of buying, the types of contracts employed, and the turn-around time for handling agency purchase requests. Day-to-day planning and scheduling are necessary to capitalize on one of the major objectives of purchasing — reducing unit costs by consolidating individual quantities for volume buying. Other economics from volume purchasing are saving in overhead costs by reducing the number of transactions, maintaining interchangeable inventories, and reducing the incidence of emergency purchases.

In times of economic instability and erratic markets, planning and scheduling are effective tools in moderating the effects of market fluctuations and the limited availability of equipment and supplies. When sharp price increases are apparent or shortages are developing, needs can be projected and, with appropriate safeguards, forward buying initiated. Especially careful planning is necessary when product availability becomes so limited that allocations are imposed by suppliers.

THE PURCHASING MANAGEMENT INFORMATION SYSTEM

The central purchasing authority needs continuing information from all using agencies as to what is on hand and how much is needed on an item-aggregate bases in order to carry out orderly and efficient procurement. Information concerning the types of commodities and quantities required gives an indication of the items suitable for buying in volume. This information alone, however, is not sufficient to determine the most economical and practical method of acquisition or type of contract to employ. Pertinent data on usage patterns, current and future market conditions, inventory levels, and warehouse capacities must be analyzed to determine whether particular items can be bought most advantageously as individual purchases under as an indefinite quantity term contract — with or without provision for price adjustment — or as a definite quantity scheduled purchase.

Though this broad-based type of information is basic for central purchasing to determine courses of action most likely to result in timely acquisition of commodities at most favorable prices, too often it is not readily available. As yet, only a relatively few jurisdictions have developed information systems which collect accurate data in a format and level of detail that permits meaningful analysis of needs. Historical information necessary to planning decisions (e.g., the number of purchase orders processed and identified by vendor and by commodity, the quantity purchased and dollar volume expended for each commodity, and the amount of the average purchase order) is frequently incomplete or inaccessible. As a result of not having the appropriate information or not having it in a readily usable form, the planning process in many state and local purchasing organizations is inadequate. Much of it must rely on guesswork rather than a well-organized process.

Not all information needed can be acquired from historical data. Planning involves an element of forecasting. Consequently, purchasing must depend also on information external to its operations, such as advance notice from using agencies regarding their expected requirements and government-wide budget data. But even when this information is received, it is often in a format unsuitable for effective purchasing use. Budgets tend to be set out in such a general form they are of little use to purchasing as indicators of future commodity requirements. As to other sources, purchasing's accessibility to information is limited when using agencies are reluctant to reveal projected schedules of future requirements for fear of negative administrative or legislative reaction. Although purchasing statutes may contemplate that purchasing should obtain such information, in reality the power to do so is largely persuasive.

Since both historical data and future requirements are necessary to the planning process, purchasing and using agencies must cooperate in coordinating and exchanging this information. The diversity and volume of commodities handled by purchasing make it impossible to determine requirements, consolidate needs, and select the most effective acquisition strategy without a systematic method of accumulating pertinent information. Unfortunately, some systems, lacking careful planning, concentrate on mere data gathering rather than purposeful management of the information.

Circumstances surrounding availability and accessibility of data can adversely affect purchasing's ability to plan and schedule. The problem calls for positive statutory language which defines the authority of central purchasing to institute a decision-oriented management information system designed to accomplish purchasing's mission.

SOURCES OF PLANNING INFORMATION

While state and local governments call upon most of the normally available sources of planning information, in one form or another, there is wide variance in the value of data received and uses made of it.

Using Agency Data

Upon request, or by a predetermined schedule, using agencies can identify items they will need, quantities they expect to order, and the times they will need them, and submit this information to the central purchasing authority. This is done usually according to categories of items that are ordered frequently, such as office furniture, flour and sugar, and maintenance supplies; and the information can be obtained monthly, quarterly, semi-annually, or annually. Based on this data, central purchasing can consolidate requirements and decide whether to seek bids on a definite quantity "schedule" contract or establish as indefinite quantity 'term" contract. The quantity size of the proposed contract, current inventory levels, and deliveries yet to be made on current contracts are among the factors considered in making the decision.

While such a procedure is usually provided in varying degrees of explicitness by statute or by rule or regulation, it is seldom completely and consistently implemented. Some purchasing laws contain a requirement that on or before a specified date each department shall submit to central purchasing a list of all its estimated needs for designated types of items for the next fiscal year, but in practice, procedures for acquiring information from using agencies often are not well enforced. Purchasing officials need to increase efforts to emphasize and impress upon agencies the importance of furnishing accurate and timely information. One aid in facilitating this is to supply specific, printed questionnaires to the using agencies. Another is to inform agencies of the savings that volume buying can generate. Further, agencies should be reminded that this same information is important to their own management systems. To obtain full cooperation of using agencies, however, central purchasing needs the support of its top management, and this support in turn depends heavily upon the effectiveness of purchasing in keeping its management apprised of its operations. Sometimes the problem is complicated by a number of using agencies served by central purchasing being outside the governmental structure, as in various cooperative purchasing arrangements, or where private, non-profit institutions are involved. In any case, the purchasing law should direct that using agencies are to furnish necessary information when and in the manner requested by central purchasing.

Budget Data

Although designed primarily for financial purposes, annual budgets, particularly those relating to capital outlays, can be formatted to serve as a useful source of purchasing information. If, for example, expenditure codes included commodity codes, purchasing could identify specific supply and equipment requirements. Where the budgetary process is computerized, the entire budget can be purged to sort expenditures for supplies and equipment by commodity code and using agency. This technique would afford purchasing profiles on the types and quantities of commodities to be needed during the coming year. Where systems are not computerized, budgets can still be analyzed to obtain at least broad indications of the general kinds and volumes of purchasing activity which may be expected in the next fiscal period.

Purchasing Management System Data

The first two types of purchasing information focus on agency sources and relate primarily to future needs. Planning future workloads and identifying items suitable for volume purchasing require close examination of historical experience. This information pertains to what, how much, how often, and from whom commodities were bought during prior periods. In the majority of purchasing offices, information of this nature is scattered throughout various bid-award and purchase order files and retrieval is extremely difficult. Obtaining a profile on a particular commodity can require a complete search of all the purchasing activity. On indefinite quantity or term contracts, records of past activity are not available unless central purchasing issues or monitors orders and releases placed against each contract and, consequently, has accurate information on the quantities of items purchased. Where there is no requirement for using agencies to furnish central purchasing copies of field purchase orders issued under established contracts, or where the purchasing office lacks personnel to maintain systematic records, purchasing can only ask vendors for sales reports. To the extent this is necessary, data reliability can be enhanced greatly by having contractors furnish copies of their invoices.

One approach to improving the availability of commodity usage data is to build on the existing management information system. Often the issuing of a purchase order involves recording an obligation in the accounting records. Where the accounting system is computerized, the encumbrance/obligation software can be modified to generate cumulative reports on purchase orders processed and to record the details of purchases according to commodity. This type of report can be updated concurrently with postings to the accounting records.

The majority of state and large local government jurisdictions now have data processing capabilities and other resources necessary to develop an automated purchasing information system. Others will do so in the predictable future, and it can be expected that computer terminal networks connecting using agencies to a central processor will greatly facilitate the compilation of data.

COMMODITY PROFILE CARD
COMMODITY X

Vendor	Award Date	Bid Award File No.	Qty.	Award Amounts	Requesting Agency
A	6/25	28919	50	$2,500	Transportation
B	7/04	29101	100	4,500	State Police
A	8/02	29256	45	2,000	Auditor
C	8/05	30421	30	1,500	State University

Establishing a productive automated purchasing management system is, in itself, an exercise in precise planning. The central purchasing office must convey to systems and program technicians must clear statements of programs requirements, and must monitor the system development to make certain it responds to these specifications and purposes.

One of the most useful tools to enhance purchasing planning and scheduling programs is the computer. Computers are most versatile, available in almost any capacity. There are excellent PC computers to the most complex on-line systems, capable of accommodating the very small organization to the greater size organization. Along with the equipment now available, there is an ever increasing number of programs developed for purchasing. Almost all organizations of size also have in-house talent in data processing programming to develop from scratch or upgrade and expand on existing programs.

The once difficult and tedious task of gathering data and further assimilating for use has been greatly reduced with the presence of the computer. We are now able to assemble giant amounts of facts and data. Almost anything is possible to obtain from the storage capacity of the computer.

Once compiled and accumulated, the next question can be, "What will we do with it?" We now have arrived at another problem: how best can all the facts and data be used? So now we are back to the planning and scheduling point.

If all this additional information is now at our fingertips and the validity is acceptable, it is now possible to make quicker decisions and extend our long-range planning and capabilities. However, because the data is continually being updated and added to, we have also increased our flexibility, allowing us to adjust our planning and scheduling accordingly.

We always return to where a decision is made to act. The decision usually is not made by computers, but by the professional who has the tools to make sound decisions. With these tools, purchasing professionals have an opportunity to provide excellent planning and scheduling for their clients.

Even with manual systems, modifications can be made to improve the generation of useful purchasing data. Purchasing information by commodity can be collected by filing bid-award documents and purchase orders according to major commodity code groups or by maintaining a cross-index according to commodities. This provides capability to retrieve needed documents and information on a particular commodity without purging the entire file. A commodity profile card can also be established as a record of the important elements of each award. The above illustration depicts one of many workable formats that can be used.

Obviously, use of this technique will depend on the volume of purchasing activity for particular items. The illustration is an example of an item with a low level of activity. In cases where hundreds of orders are placed against a contract for a particular item, this system is less feasible.

Survey Data

Another method of data collection relates to the refinement of information obtained from the methods just described. After assembling using agencies' numerical requirements, the central purchasing office must determine if and how the items can be advantageously bought in volume. A helpful procedure is to conduct using agency surveys, usually in the form of questionnaires, asking at what times the items will be needed over the next fiscal period, the delivery points involved, the levels of performance required, and the salient specification characteristics needed. Information gathered by such surveys assists purchasing in assessing whether the items have a multi-agency application and whether developing a standard specification would be practical. Although volume buying ordinarily is advantageous, suppliers sometimes may not be able to bid attractively on a large-scale contract. Production schedules, limited warehouse and distribution facilities, and restricted availability of materials and manpower are possible barriers. For this reason, central purchasing should also survey suppliers to determine their capabilities for meeting supply, delivery, and distribution requirements, as well as their ability to respond to proposed standard specifications.

COST-SAVINGS ANALYSIS

After getting information on historical activity and future estimates and canvassing using agencies and vendors, purchasing can perform a cost-savings analysis before determining a final course of action. This is indicated because volume buying, when compared to spot purchasing, does not invariably result in a net savings. Certain commodities have fairly stable prices which are not materially affected by changes in purchasing patterns. Additionally, volume buying initially requires more planning and coordination than an individual purchase and, consequently, added processing costs must be considered. By their nature, many items, varying from a cafeteria serving counter to an electron microscope, require individual purchases. Particularly for low-priced items, evaluation should be made as to costs of purchases handled on either a spot or a consolidated basis by central purchasing, savings resulting from eliminating repetitive bids and quotations, and the overall costs of purchases made by using agencies through informal quotations. In this way, the anticipated benefits generally associated with volume buying can be determined with reasonable accuracy.

EQUIPMENT AND SUPPLY ITEMS IN CONSTRUCTION CONTRACTS

An application of planning and scheduling, frequently overlooked, is involved on the part of central purchasing in deciding when items can be obtained most advantageously by including them in or deleting them from a construction contract. If deleted they are "furnished by the owner," either through separate bids handled by the purchasing office or by ordering them under existing term contracts.

In addition to movable furniture, office machines, and miscellaneous supplies customarily not included in a construction contract, a list of items that potentially may be purchased more economically apart from the building contract shows much diversity: venetian blinds, lighting fixtures, incandescent bulbs and fluorescent tubes, water coolers, radiological apparatus, kitchen and food service equipment, auditorium seating, carpet, science and home economics cabinets, closed circuit television, library furniture, and so on.

In considering whether items might be included or not included in a construction contract, two principle factors come into play — economy and convenience. Convenience may be served by including equipment in the general construction contract and having overall coordination and responsibility for the project fall on one contractor. Economy is usually served by taking separate bids on certain kinds of requirements in a manner to bring about greater competition both as to products and prices offered.

When included in a large construction contract, these items take on a minor significance. Specifications often are written such that all construction contractors bidding on the project offer the same brand, e.g., a particular make of an auditorium chair, based on an identical price received from the manufacturer or distributor. This eliminates product competition. Where, for example, a chief radiologist has a strong preference for a certain brand of x-ray equipment, the architect's specifications may be written to limit competition to that brand, or the mounting devices may be designed or laid out so that only the preferred brand can be installed; therefore, although six or eight competing contractors submit bids for the project, in actuality no product competition and relatively little price competition is received. A further cost is incurred by the contractor adding a profit factor to the price of the equipment.

When bids are taken by the purchasing office, however, the requirement and the nature of the specifications receive more visibility. Bids are invited from a wide group of prospective suppliers, and greater competition and lower prices usually result.

To realize these potential savings, a statutory provision is needed authorizing central purchasing to determine whether items should be included in, or purchased separately from, a construction contract, with rules or regulations required to provide a procedure for implementing the statutory authorization.

TYPES OF CONTRACTS

For purposes of discussion and better understanding, it is necessary to distinguish between methods of purchase and types of contracts. There are several methods of making purchases and many types of contracts, and there are certain relationships between the two. The methods of purchase fall roughly into four categories: competitive sealed bidding, which also covers two-step or multi-step bidding; competitive negotiation; sole source or noncompetitive negotiation; and small purchases. These are treated elsewhere, and particularly in Chapters 8 and 9, including their application to emergency purchases.

Types of contracts can be classified in two ways. One is by quantity — in a general sense, every contract is for either a definite quantity or an indefinite quantity. Purchasing professionals characteristically favor definite quantity contracts as affording more realistic prices and delivery commitments. Recent data show that states make purchases predominantly by definite quantity contracts, and that the practice is increasing.

The other means of classifying contracts is by price or cost, such as a fixed price contract or a cost reimbursement contract. These involve numerous variations, including: fixed-price contract with price adjustments, firm fixed-price contract, cost contract, cost-plus-percentage-of-cost ("cost plus") contract, cost-plus-fixed fee contract, fixed-price cost incentive contract, performance incentive contract, time and materials contract, and others.

In practical terms, state and local governments use relatively few of the price- or cost-type variations. Definite quantity purchases are usually firm fixed-price contracts, with construction and public works contracts having special provisions for modifications and price changes. Indefinite quantity (term) contracts are fixed-price contracts, often with provisions for price adjustments downward, or upward and downward. Cost-plus-a-percentage-

of-cost contracts are inadvisable and seldom used, and time and materials contracts usually are employed only for small jobs. There are decided advantages to the use of cost-plus-fixed fee contracts for some kinds of work and to incentive contacts under certain conditions, and it is reasonable to expect that the use of both of these types will increase. It is important that the purchasing statute address the types of contracts; that the use of any type of contract be authorized except a cost-plus-a-percentage-of-cost contract, which should be specifically prohibited; and that rules and regulations be adopted establishing guidelines governing the use of the different types. Planning and scheduling need to be integral to many of the decisions leading to the selection of a contract type.

VOLUME PURCHASING: TERM CONTRACTING AND SCHEDULING

As already noted, aggregating the needs of using agencies necessitates planning and scheduling. In the purchase of equipment, materials, and supplies, indefinite quantity term contracting and schedule buying are the means widely used by state and local governments to consolidate requirements for volume purchases.

Term contracting, broadly defined, is a purchasing technique that established a source or sources of supply for deliveries to be made over a period of time. Within this definition are a number of possible arrangements:

- Definite quantity for a definite period.
- Approximate quantity for a definite period.
- Indefinite quantity for a definite period.
- Indefinite quantity for an indefinite period.

Ordinarily, however, term contracts are thought of as approximate or indefinite quantity arrangements and in this context are referred to variously as "open-end contracts," "blanket contracts," "requirements contracts," "blanket orders," "purchase agreements," as well as the more general expression "term contracts."

All states and most local governments use indefinite quantity contracts, some to a much greater degree than others. A few states report up to 90 percent of their purchases by dollar volume are made under indefinite quantity contracts, while others report figures as low as 5 percent.

Term contracting can provide certain advantages to both buyer and seller. For the seller, it represents business in volume and an opportunity to secure an increase in volume and an opportunity to secure an increase in sales that will be spread over a period of time, permitting the successful bidder to plan ahead. A vendor can view such a contract as a sort of insurance or asset which can facilitate financing arrangements. Term contracting also spares the supplier the administrative time and expense of repeatedly preparing and submitting quotations and bids. It can reduce sales expense and permit redirection of sales efforts. In addition to tangible benefits, there is frequently an esteem associated with being the successful bidder on a contract of this type, which in turn stimulates competitive pricing.

Many of these same advantages can be realized by the purchaser. He can reduce administrative costs by avoiding the highly repetitive activities involved in preparing and issuing Invitations for Bids on the same or similar items and receiving, handling, and evaluating the responses. Widespread use of term contracting permits handling larger volumes of purchases with fewer personnel. Numerous procedures are possible for simplifying paperwork or computer processing throughout the requisitioning-soliciting-ordering-invoicing-paying cycle. And the problems and costs of maintaining inventories can be greatly reduced and sometimes almost eliminated by use of term contracts which provide for the successful bidder to warehouse and deliver the contract items as needed by the using agencies.

Scheduled buying can be regarded as a definite quantity type of term contract where needs of certain items are aggregated for one or more agencies and purchased in bulk at predetermined intervals. The purchasing intervals are established in accordance with market characteristics or using agency consumption patterns, taking into consideration seasonal factors and warehousing facilities. A schedule is then developed where under particular commodities are contracted for at monthly, quarterly, or longer intervals.

The type of commodity being purchased affects the decision to use indefinite quantity term contracting or definite quantity scheduled buying. For example, fresh meats and similar perishables are usually requisitioned on an as-needed basis. Consolidation in such cases relates more to immediate needs, and the planning cycle is generally limited to the life cycle of the perishable commodity. Consequently, bulk buying for perishable items normally occurs several times a year.

Commodity usage also affects selection of the contracting method. Commodities which are typically required throughout the year and used widely among all agencies usually lend themselves to indefinite quantity contracting. Items which are required on a seasonal basis or have a predictable usage pattern are more suited to definite quantity scheduled buying.

Probably the two most important factors influencing which technique is appropriate are the accuracy with which central purchasing can determine the quantity requirements for a specific commodity and the relative stability of its price. Where the exact quantity required is known, scheduled buying can be carried out. Advancements in computer applications, combined with growth of more highly developed commodity classification coding, are enhancing the abilities of central purchasing offices to assemble the usage and needs of individual items quickly and accurately. But where quantities cannot be determined correctly in advance, and where actual usage can vary substantially, term contracting is suitable.

The state of the economy and especially the market conditions applying to the commodity or commodity group in question also must be considered. A buyers' market generally improves the practicality and attractive-

ness of term contracting because suppliers are more willing to accept the buyers' terms and conditions. On the other hand, fluctuating prices or a sellers' market associated with product shortages are not conducive to long-term contracts.

Individual or "open market" definite quantity purchases with specific delivery dates rarely, if ever, allow for price adjustments. Firm fixed prices apply also to the great majority of contracts awarded under scheduled buying. Indefinite quantity contracts, however, frequently provide for price reductions, and in an inflating economy, carefully worded provisions for price increases can be used very successfully, especially when accompanied by a clause permitting cancellation by either party upon 30- or 60-day prior notice. This use of a fixed-price contract with price adjustment allows the bidder to offer his most favorable price at the time of bidding, rather than an inflated price which may, in fact, not increase at all during the period of the contract. If a request for increase is not adequately documented or, otherwise, does not appear acceptable, the price adjustment clause should provide that the purchaser may cancel.

Indefinite quantity contracts are most effective as requirements contracts awarded under competitive bidding. Correctly understood, a requirements contract obligates the agency or agencies eligible to buy under the contract to order any and all of their needs of the designated item or group of items from the successful bidder, who, in turn, are compelled to furnish the items. The contract is not enforceable if a buyer may order or not order from the contract according to whim, desire, or preference.

Under both term contracting and scheduled buying, central purchasing must insist upon strict compliance with the intent, terms, and conditions of the purchase contract. Using agencies must not be allowed to depart from the contracts except under some circumstances that are unique, justified, and approved by central purchasing and for which the Invitation for Bids and resulting contract should provide. Effective contract administration requires that central purchasing monitor all purchases made for or by using agencies against established term contracts, either by issuing the orders from the central purchasing office or by requiring agents to submit copies of purchase orders to central purchasing. This information base will make it possible for central purchasing to maintain an up-to-date reading on the contract status. Such information can be critical in the case of definite quantity contacts, where cumulative orders can rapidly approach the contract amount and the purchasing office needs to be alerted in time to prepare a new contract.

As noted, volume purchasing is built upon items which are ordered regularly or repetitively. This permits forecasting in terms of specific quantities or estimates, and allows quantities to be consolidated in some systematic way. 'Non-volume" purchasing involves quotations or bids and awards on individual purchase requests from using departments and agencies. These do not lend themselves to planning and scheduling and will be discussed in subsequent chapters.

LEASES AND LEASE OPTIONS

The practice of leasing real property, e.g., land, buildings, and space in buildings, is well established among state and local governments. This has also applied to equipment from time to time, as when extra snow-moving machines are needed after a severe winter storm. During the past decade, however, the lease of equipment has taken on new and much larger dimensions, stimulated by the extremely high cost and rapid obsolescence of various kinds of apparatus, such as computers and radiological scanners. High technology items undergo continuing changes and improvements, and even when funds for purchase are available, decisions as to whether to buy or lease become difficult to make. Only foresight and thoughtful planning can reduce the risks of poor decisions.

A lease is a contract under which title to the building, equipment, or other property will not pass to the lessee. A lease with an option to purchase, however, allows title to pass if the purchase option is exercised. It is, or has the effect of, a conditional sales agreement.

Leases and purchase options should never be used to avoid or circumvent the requirements for competition. Some jurisdictions already have statutes which guard against this. In others, legal divisions have ruled that an option to purchase cannot be exercised unless the agreement containing the option was awarded under competitive bidding or unless the item in question meets the test of an emergency or sole-source procurement.

The soundest and safest rule is that any lease of equipment be subject to the requirements for competition that apply to outright purchases.

Where third-party leasing is involved, competition can be applied to the cost of money. Saving on interest cost often can be realized by taking competitive bids on finance charges applicable to the lease.

COST PRINCIPLES

Some types of contracts call for the application of cost principles. Chief among these are cost contracts, cost-plus-fixed-fee contracts, and cost incentive contracts. The central purchasing office should establish written guidelines defining cost principles and conditions for their use. If central purchasing does not have in-house capabilities for cost and price analysis, assistance should be made available from appropriate fiscal management operations of the jurisdiction.

Most state and local governments do not currently require the application of cost principles in many instances where it would be advantageous. In general, the principles should be used more extensively in connection with contracts for research and development, sole source requirements, professional services arrived at by negotiations and for determining contract price adjustments, and cancellation charges.

6. Acquisition: Specifications

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Specify that purchase specifications shall be written to provide for and encourage full competition.
Require that central purchasing establish and maintain a specification and standardization program with written policies and procedures.
Authorize central purchasing to prepare, review, modify, approve, and enforce purchasing standards and specifications; and to delegate to using agencies the preparation of specifications as appropriate.
Require the adoption of rules and regulations authorizing use of all types of purchase specifications and prescribing procedures for developing them.
Prohibit the use of restrictive specifications, except under conditions prescribed by rules.
Provide that private sector architects, engineers, designers, and draftsmen preparing specifications for public contracts adhere to the requirements for openness and non-restrictiveness described in the statute.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Describe the roles and responsibilities of central purchasing and the using agencies in the preparation and enforcement of purchase standards and specifications.
Identify and define different types of specifications and procedures for preparing them.
Provide for review by central purchasing of specifications for undue restrictiveness, for appropriateness of quality level, and for suitability for competitive solicitation; and provide it may take appropriate action to these ends.
Encourage use of performance specifications to promote ingenuity, innovation, and cost reduction.
Establish a policy on the use of brand name specifications and a policy on brand-name-or-equal specifications that encourages competition.
Provide for the degree and kind of consideration that may be given to bids offering alternate specifications, solicited and unsolicited.
Prohibit material furnishers and prospective suppliers from bidding on requirements if they prepare or assist in preparing the specifications.
Encourage the use of advisory committees that include using agency personnel in establishing, modifying, and updating standards and specifications.

Recommended Practices

Purchase specifications should be closely tailored to utility and not call for features or quality not needed for an item's intended use.
To aid in providing commonality for bidding, a specification should identify the essential characteristics of the item to be purchased.
In drafting and updating specifications, voluntary consensus standards and specification information available from other governmental units should be utilized.
Generally, specifications should provide for commercial products (off the shelf items) and not unique or custom-made items.
Standard specifications should be issued in a prescribed format, properly indexed, and each should carry a designated time for review and updating.

The conventional use of the term "specification" refers solely to a description of an article or service called for, which is the meaning given to it in this discussion. It is used interchangeably with "purchase description," and may or may not contain technical requirements. Essentially, the specification is any type of description of the characteristics or nature of the item being sought. In addition to "purchase description," other terms with like meaning are "purchase specification," "product description," "purchase requirement," and "commercial item description."

A specification can include requirements relating to samples, prototypes, inspection, testing, warranty, and packaging. Specifications should not contain bidding instructions, contractual terms and conditions, delivery, pricing formats or sheets, or similar material which should be provided separately in the Invitation for Bids or the Request for Proposals. **The central purpose of a purchase specification is to provide a basis for obtaining a product or service that will satisfy a particular need at economical cost.** Carrying out this purpose implies the consideration of factors related to suitability and to

overall cost-effectiveness, beyond factors concerned only with acceptability and initial price.

In public purchasing, another purpose of a specification is to invite maximum reasonable competition. To this end, specifications may not be unduly restrictive. By nature, a specification sets limits and thereby eliminates, or potentially eliminates, items that are outside the boundaries drawn. As a principle of public purchasing, however, a specification should be written to encourage, not discourage, competition consistent with seeking overall economy for the purpose intended.

Instructive insight into the philosophy and objectives of a purchasing program can be gained from noting the appropriateness of the types of specifications used for the procurement of various kinds of goods and services.

AUTHORITY FOR SPECIFICATIONS

Sound management requires that there be central control over purchase specifications. All states report this as a purchasing duty, assigned by statute in over 70 percent of them. Responsibility for the final correctness, competitiveness, and suitability of specifications is an integral function of the central purchasing office authority, although a specification may be originated by a using agency, an independent architect or engineer, another governmental entity, a professional society or association, or the central purchasing authority itself. Without central control, each using agency would set specifications for its own purchases, resulting in different specifications for the same items. Such inconsistencies would be disorderly, confusing to bidders, unmanageable and indefensible. However, cooperation between central purchasing and using agencies concerning the efficacy and suitability of specifications is essential, and the initiative for sustaining this cooperation resides with the central purchasing office.

Cooperation is often complicated by an attitude relating to program funding which exists generally among using agencies. The agency point of view, oversimplified and perhaps overstated, is that it is authorized to spend to the limits of its budget and should be able to buy whatever product or service it prefers if the purchase would not exceed the funds available. The professional purchasing point of view, on the other hand, is to conserve public funds, and to refrain from buying a more costly product or larger quantity than is actually needed. Moreover, the function is obligated to try to obtain both product and price competition. This difference in attitudes is a persistent undercurrent even in calm waters.

Some two-thirds of the states have policies calling for central purchasing to review the quantity and/or quality specified in using agencies' requisitions. The National Institute of Municipal Law Officers' Model Purchasing Ordinance for local governments provides that the purchasing "Agent shall examine each (agency) requisition or estimate and shall have the authority to revise it as to quantity, quality, or estimated cost," with revision as to quality subject to certain standards and specifications. Similarly, the American Bar Association Model Procurement Code Suggested Regulations for State and Local Governments recommends the chief procurement officer have authority to return a purchase requisition to a using agency when "the request exceeds agency needs" or "quality requested is inconsistent with (the jurisdiction's) standards and usage." The Model Code also stresses that specifications shall seek to encourage competition and promote overall economy for the purposes intended.

Almost all of the states and many local governments have standardization programs. Though the central purchasing authority has extensive responsibility regarding procurement specifications, it is incumbent upon using agencies to initiate their program needs. Since central purchasing is a support function for program agencies, it, too, is concerned that program managers obtain the correct items to serve their requirements. The duty of the purchasing office to see that specifications encourage as full competition as is practicable causes varying degrees of misunderstanding between the using agencies and the central purchasing authority, especially when the latter must modify agency-prepared specifications to make them less restrictive. To reduce such misunderstanding, the specification process should be set forth in writing, citing the roles and responsibilities of both using agencies and central purchasing.

There is often direct vendor involvement in the development of specifications by using agencies. This condition emphasizes further that although using agencies may initiate the descriptions of items they are seeking, it must remain the responsibility of central purchasing to determine that a specification which finally accompanies the Request for Bids is not unnecessarily restrictive and does not call for features or for a level of performance or quality not needed for the item's intended use. Consistency, accountability, and enforceability necessitate that the purchasing office have approval of specifications before they are offered for bidding. **Given the inherent potential for misconception and conflict over this question, it is extremely important that the purchasing statute authorize central purchasing to establish, revise, and enforce specifications, and require the promulgation of rules and regulations to carry out this purpose.**

TYPES OF SPECIFICATIONS

In communicating to the prospective bidder or offeror what the purchaser wants to buy, specifications can be prepared in a number of ways. Speaking generally, one is the specification that requires something unique, to be custom-made or custom-built, as is characteristic of construction and public works projects, many contracts for professional and personal services, and traditional federal government product specifications. The other general group calls for ready-made, off-the-shelf commercial items, regularly available in the marketplace, as is characteristic of equipment, materials, and supplies purchased by state and local governments under competitive sealed bidding.

Specifications can also be described as standard and non-standard. A standard specification is developed for repeated use, in the sense that it can be lifted from a file in ready-to-use condition or can be cataloged and cited by reference. A non-standard specification is prepared for a particular procurement and connotes a one-time use.

Within these broad groupings are more particular types, including: brand-name specifications, brand-name-or-equal specifications, detailed, design type specifications, functional or performance type specifications, and the Qualified Products List (QPL) — also called an Approved Brands List (ABL) or Approved Products List (APL) — kind of specification.

The highly detailed, design type of specification is usually necessary in the purchase of custom-made products and in contracts for projects built or performed to the purchaser's special design. Its use otherwise is not necessary, nor usually advisable. The functional or performance kind of specification has distinct advantages in promoting competition and in evaluating responses to ascertain overall economy. A carefully prepared specification customarily contains some degree of both design and performance requirements.

There is a need and place for all of the different types of specifications. States report using all of them except that two states do not use the Qualified Products List type. Critical to the relative success of a purchasing program are the knowledge, insight, and understanding of the staff in making the daily procurement-by-procurement decisions as to the most advantageous type of specification to use in each case.

Brand Name Specification

Although related, brand name, brand-name-or-equal, and qualified products list types of specifications are different. The brand name specification or a detailed specification which is written to have the effect of limiting the bidding to a single product are the most restrictive kinds of specifications. Their use should not be permitted unless only one product will meet an intended need, and the chief purchasing official has made a prior written determination to this effect. And even where product competition has to be denied, price competition should be solicited to the extent possible.

A version of the brand name specification also is sometimes justified by a need for limited standardization, as in the cases of residential water meters or watt-hour meters. In these cases, after the policy decision has been made the bidding can be limited to two or three specific makes and models.

Brand-Name-or-Equal Specifications

A brand-name-or-equal specification cites one or more brand names, model numbers, or other designations that identify the specific products of a particular manufacturer as having the characteristics of the item desired. Any other brands or models substantially equivalent to those named are considered for award, with the purchaser reserving the right to determine equivalency. Brand-name-or-equal specifications invite product and price competition across the marketplace, and they have a legitimate place in public purchasing although they tend to be overdone. Only where the time and resources necessary to develop another kind of specification are not available or cannot be justified, or where simple practicality dictates, should the brand-name-or-equal specification be used and the savings in time directed to more complex specification efforts in other product areas.

Brand-name-or-equal specifications should state clearly that the brands designated are for reference purposes only, not a statement of preference. To the extent practicable, three or more brand references should be used, and unless the essential characteristics sought are adequately conveyed to the industry by the reference, any particular design or functional characteristics needed should be so designated. The specification should always be accompanied by a phrase such as "or equal," "or approved equal," or "similar in design, construction, and performance," to indicate that bids on items equivalent to the specified brand names are invited. Further, this intent should be set forth in the Request for Bids by a statement such as:

> "Any manufacturers' names, trade names, brand names, or catalog numbers used in the specification are there for the purpose of establishing and describing general performance and quality levels. Such references are not intended to be restrictive, and bids are invited on these and comparable brands or products of any manufacturer."

Qualified Products List

A qualified products list (QPL) is a specification based also on manufacturers' names, brand names, and model or catalog numbers, but it is arrived at by a systematic and formal process. A QPL is predicated on a written specification which includes certain tests or other criteria for comparing or examining and approving products prior to soliciting competitive bids. These criteria and the methods for establishing and maintaining a QPL vary widely for different types of products. For an item of heavy construction equipment, a written specification might be prepared and similar models from different manufacturers given field tests to determine which meet the performance requirements. For musical instruments, a committee of musicians acting as advisors to central purchasing might test different brands of an instrument according to certain procedures. In the case of padlocks, a number of brands might be tested under controlled conditions, and assessments made of their performance. For ready-mixed paints, laboratory tests may be used to accept or reject a brand.

Some items require lengthy examination or tests. A qualified products list eliminates the need for samples or testing after the receipt of bids. Awards can be made promptly, the acceptability or comparative rating of products having been determined before bidding.

This type of specification can reduce the amount of testing in the long run because different brands can be tested simultaneously. Also, once a product is accepted for the list, it does not require further testing until either the specification or the product changes. Actual samples and/or highly documented files should be kept on each item that qualifies. These can be used as a contract standard so that contract quality can be enforced if a supplier delivers questionable goods.

The need for enforceability results not only from concern over receiving substandard goods, but also from a problem inherent in the process. The lists specify acceptable products by brand name, model number, or whatever designation is necessary to precisely identify a certain product. Sometimes manufacturers modify the quality of a product without changing its model number or other designation. This means the product may still be listed as acceptable, though it may no longer meet the specification. Even where manufacturers or their representatives agree to inform purchasing if they make any such changes, the added assurance of having a documented standard of quality is necessary.

While the use of qualified products lists often enhances uniform testing and simplifies the award process, there can be a disadvantage if, over a period of time, the approval of products tends to gravitate to marginal levels of quality. This can be prevented by including in the qualification procedures, where feasible, qualitative ratings or test scores which become a part of the bid evaluation process by relating these numerical ratings to the bid prices in order to arrive at optimum value. For example, if a truck tire must pass a use test of a minimum average of 25,000 miles to be qualified, and the test averages of the six brands which pass are 25,000, 26,000, 29,000, 30,000, 32,000, and 36,000 miles, then these figures and the price bid on each can be equated to determine the lowest average cost per mile.

This concept of relating performance and price also aids in overcoming another disadvantage — that of looking behind rather than ahead. In dealing only with products already on the market, QPLs do not encourage or take advantage of innovation unless they use performance ratings as criteria for qualification and also in the evaluation of prices bid to determine award.

In developing Qualified Products Lists, there is need for clear policy on how the qualification process is conducted. The manner and times of test must be made known to bidders or prospective bidders, who then have the responsibility of submitting items for qualification within the prescribed time or foregoing inclusion on the QPL for the next procurement.

Design Specifications

The following discussion of design and performance types of specifications should be understood in the context that each usually contains elements of the other.

Design specifications customarily employ dimensional and other physical requirements of the item being purchased. "Design" in this sense means that the specification concentrates on how a product is to be fabricated or constructed. It is the most traditional kind of specification, having been used historically in public contracting for buildings, highways, and other public works, and represents the kind of thinking in which architects and engineers have been trained. Its use is called for where a structure or product has to be specially made to meet the purchaser's unique need.

Other than construction work, however, state and local governments buy almost exclusively commercially available products designed by the manufacturer or seller. Here, detailed design specifications often have precise characteristics that unnecessarily limit competition. Unless an article is to be custom-produced, it can be extremely difficult and at times impossible to draft design specifications without being unduly restrictive.

Other disadvantages are equally obvious. Detailed product specifications are inclined to reflect the status quo, and thereby lag behind the state of the art and prevent consideration of latest improvements. In tending to perpetuate current or outmoded concepts and methodologies and to discourage innovation, they limit both product and price competition. The rigidity of a highly detailed specification and the emphasis on initial price are incentives for the bidder to offer minimum to marginally acceptable quality.

As a rule, this type of specification does not accommodate a rapidly changing technology and is poorly suited for the purchase of many commercial products.

Performance Specifications

The popularity of the functional or performance type of specification has grown rapidly in recent years. The terms "functional" and "performance" are used interchangeably to designate an approach to specifications that is less interested in dimensions and materials and configurations and more interested in what a product does. The performance specification is less concerned as to how a product is made, and more concerned as to how well it performs, and at what cost. Performance purchasing is *results-oriented* in terms of function and cost. In contrast to the design approach, performance specifications afford the manufacturer or bidder sizable latitude in how to accomplish the end purpose.

Performance requirements describe the characteristics and capabilities that are pertinent to the intended use of the article. Tests or criteria are developed to evaluate a product's ability to perform and to endure as required.

Functional specifications are not new. Signal Corps Specification No. 486 dated December 23, 1907 was almost entirely a performance description included in an "Advertisement and Specification for a Heavier-than-Air Flying Machine." Materials and design were left largely to the bidders, while performance requirement listed such things as take-off and landing in a specified distance and on specified surfaces. The Wright Brothers, Dayton, Ohio, was the successful bidder at a contract price of $25,000.00 for delivery within 200 days to Fort Myer, Virginia, with the "package to be marked Order 3619."

Writing competitive performance specifications and subsequent bid evaluations require a different approach and point of view than the more traditional detailed type. For the latter, the customary attitude is to look for similarities and equivalencies in products in order to establish common denominators, and largely to ignore product differences. Functional specifications, on the other hand, accept the similarities, but seek to identify differences which provide equal or better performance and lower costs.

One element of the performance specification is focusing on use-cost as a more accurate basis than initial price for achieving economy. Utilization and limitations of life-cycle costing (LCC) are discussed in Chapter 10, "Acquisition: Bid Evaluation and Award." LCC has its roots in the drafting of specifications which define and require the kinds of performance data that are essential to the application of LCC criteria.

Current information from the states regarding use of different types of specifications carries a mixed message. Most promising is the growing use of the performance type; less encouraging is a comparative undiminished use of detailed, design specifications, especially to the extent this applies to the purchase of regular commercial products.

SAMPLES AND TECHNICAL DATA

Samples and data questionnaires are valuable aspects of the specification process, and their use almost universally falls short of their potential. For many items, the comparison and testing of samples can effectively supplement a brief product description.

Examples of this are waxes and floor finishes, paints, disinfectants and germicides, file cabinets, surgical dressings, tires, cleaning agents, printed forms, classroom furniture, and art materials. Under this procedure, bidders are invited to offer their price and a sample of the product against a general descriptive specification. The samples, unidentified, are then subjected to comparisons ranging from visual inspection and evaluation to chemical and physical laboratory tests to in-use applications. Data and relative performance results are documented, and determinations are made on a price/performance, cost-effective basis.

Samples are also of great value in assuring compliance and ultimate satisfaction after award, but before production. In the purchase of truck chassis or band uniforms, for example, final award of a contract may be contingent upon the successful bidder producing a pilot model or prototype that satisfies specified requirements. This allows many problems to be resolved before the units are manufactured and delivered. If agreement on the pre-production sample cannot be reached, the contract can be awarded to another bidder.

Wherever samples are obtained and used in evaluation or award, the samples should be retained for checking and comparing deliveries for contract compliance. Product questionnaires, made a part of the Requests for Bids and calling for technical data to be furnished by the bidders on the products being offered, can supplement specifications and, in many cases, can substitute for samples. Valid determinations regarding product acceptability and performance can be made from pertinent technical data as well as from the comparison, examination and testing of samples.

The great variety of goods and services bought by state and local governments necessitates the use of all of the several types of specifications. In a Request for Bids covering hundreds of items of laboratory supplies or automotive parts, a brand-name-or-equal specification may be the most appropriate. For a proprietary part where no other will fit, a brand name specification is necessary, with price competition solicited from as many dealers as possible. For the purchase of lead pencils, performance description, samples, and trial may serve best; for computer tape, a qualified products lists; for gasoline, a performance specification; for an x-ray machine or an air compressor, a combination design-performance type of specification. For many requirements, the design-performance combination serves well, with design requirements kept to a minimum and the performance characteristics essential to the purpose and use of the product or service clearly identified and spelled out.

STANDARD SPECIFICATIONS

Where items that have similar usage are needed frequently or repetitively by a particular using agency or by several using agencies, a standard specification can be developed. This allows central purchasing, or a central committee created for the purpose, to establish performance and quality levels for common usage, which reduces the varieties of things bought, simplifies inventories, facilitates the consolidation of requirements into large volume bids and contracts, and eliminates duplicative specification writing.

The term "standard specification" is related to but should be distinguished from two somewhat related terms.

"Standardization" is a process that establishes a norm for an item with respect to size, shape, color, or some other attribute. Standardization results from selection or limitation from a broader field. If there are trucks that carry many different maximum loads, a government might standardize on a three-quarter-ton truck for light work and a two-and-one-half-ton truck for heavy work.

A "standard" is a norm resulting from a standardization process that is accepted by the group concerned. By definition, a standard is something established by authority, custom, or general consent as a model or example to be followed. Among the more common technical applications are standard classifications, standard terminologies, and standard test methods. The development of standards is discussed at the end of this chapter. A standard may deal with part of an item or the entire item. The size of electric outlets is standard throughout the country. The dimensions of certain light sockets are standard throughout the industry so that light bulbs from manufacturers X, Y, and Z will fit them.

Many jurisdictions, state and local, have formal programs for adopting standard specifications. This responsibility is often assigned by statute or ordinance to a "standardization" or similar committee or board composed of administrative officials from different departments, institutions, and agencies. It is the duty of the committee to establish, wherever feasible, specifications for supplies which shall apply alike to the needs of the majority of using agencies. Coupled with this duty is the implication or direct instruction that the committee determine or adopt standards in accordance with which specifications are written. The governing law or rule also usually provides that using agencies shall be consulted in the process of developing and adopting a standard specification, and that either the committee or the chief purchasing officer may exempt an agency or a particular purchase from the standard.

The idea of high-level standards committees and standard specifications was strongly endorsed and widely accepted in public purchasing during a period 10 years or so both prior to and following World War II. Much of this support was generated by activities of the federal government, wherein by December 1950 over 2,000 standard specifications had been established for federal use by the Federal Specifications Board, housed in the Federal Supply Service of the General Services Administration.

Significant changes since that time call for a re-examination of these programs. An accelerated rate of technological change tends to impose a built-in obsolescence on standard specifications for many kinds of items. The programs should not be abandoned, however, or allowed to languish — there is still a need for them. But if they are to be assets instead of handicaps, they need to be re-evaluated and modified. The federal government itself has recognized this and is replacing many of its design-type "federal specs" with CIDs ("commercial item descriptions.") A CID can be an almost skeleton type of specification that lists specific characteristics wanted in an "off-the-shelf" item. Well-thought-out CIDs are performance oriented and avoid listing features that would make them unnecessarily restrictive.

Re-examination should be directed to the end that the program accommodates and is readily responsive to new concepts, to improved products, and to advanced applications. This calls for focus on at least five aspects of the program:

- Identifying items for which standards currently are relatively stable, such as meats, canned fruits and vegetables, and various building materials.
- Discontinuing standard specifications for items where such specifications are no longer needed or it has become impractical to update and maintain them.
- Substituting, wherever possible, performance requirements for dimensional and other design-type details, especially on items for which manufacturing standards tend to be unstable.
- Providing a highly expeditious means of reviewing and modifying a standard specification for a current procurement.
- Expanding the advisory role and ad hoc participation of using agency personnel throughout the standards work.

A standardization and standard specifications program, as popularly conceived and operated, is a static program in terms of the daily scientific advances and unpredictable markets that have become commonplace. The ability of such a program to meet its fundamental objectives, yet adjust and be current, depends upon flexibility both in procedure and in specification writing. As a means of reducing rigidity and obsolescence for items that must be custom-made or unique, standard specifications may emphasize details, but should incorporate performance standards where practicable. For commercially available items, a standard specification should be based on performance criteria with design/detailed factors used only if demanded.

Attention must be directed to improving procedures for adopting standard specifications. Standardization boards and standing specifications committees tend to become institutionalized, comfortable with the status quo, and inflexible. Ad hoc committees can bring fresh approaches to the process.

NON-STANDARD SPECIFICATIONS

The great majority of procurement transactions are not based on standard specifications. The term "non-standard specification" has no certain meaning and is used here only as a convenience for referring to many specifications and product descriptions which are not standard specifications and are not formulated according to procedures prescribed for standard specifications. If a central purchasing office issues an average of 50 solicitations daily — Requests for Quotations, Requests for Bids, and Requests for Proposals — possibly not more than 5 to 10 involve a standard specification. Yet standard specifications can apply to many separate items in a single solicitation, such as a yearly contract for soaps and detergents, which often are the kinds of requirements that lend themselves to term contracts and scheduled purchases where bids are taken quarterly, semi-annually, or annually.

A non-standard specification, therefore, can be anything from a simple brand-name-or-equal description to a statement of work for a professional service to a detailed specification for construction of a hospital. Preparing them as parts of competitive solicitations constitutes a large portion of purchasing's daily work and is a commanding reason for purchasing teams to include appropriate technical personnel.

RULES AND PROCEDURES FOR DEVELOPING SPECIFICATIONS

Although central purchasing has, or should have, final responsibility for the competitiveness and suitability of purchase specifications, it does not initiate or prepare all specifications. The size of staff necessary to do this would be prohibitive. The concept of central purchasing as a management function contemplates that much of this

work be done by others, with purchasing seeing that proper rules and procedures are observed and reviewing the work for competitive sufficiency before issuing a Request for Bids or Request for Proposals.

Usually, central purchasing serves as the primary activity in developing specifications for items purchased under indefinite quantity term contracts and definite quantity scheduled purchases. These include most of the standard specifications. Central purchasing also is closely involved in the formulation and enforcement of policy and procedures applicable to the development of specifications generally.

The duty of public purchasing to promote both product and price competition requires that purchase specifications be as non-restrictive as practicable, consistent with satisfying legitimate needs. This duty remains the same when specifications are prepared by using agencies or by independent architects and engineers.

Written policy and procedures should govern the development and application of specifications. The role of advisory committees has been reviewed under the section on Standard Specifications.

For brand-name-or-equal specifications, the rule should call for naming as many different brands as is practical and the designation of any essential components or features, unless these are known to the prospective bidders by the nature of the brands used as references.

For a brand-name, exclusive specification, rules should require that central purchasing determine in writing that the purchase be restricted to one brand. The rule should further stipulate that where the product is available from more than one source, price competition be solicited. If price competition cannot be obtained, purchase is made through written quotation and/or negotiation with the single source.

Procedures for developing a qualified products list are more complex. The QPL has the effect of a standard specification, and in some jurisdictions, adoption by the standardization committee or board is a requisite. Even where this is not the case, the procedure should require that: (a) the draft of the specifications, on which inclusion or rejection of products on the QPL will be made, is circulated for review and suggestions to using agencies, to manufacturers, and to known interested bidders; (b) solicitations be made in writing for the submission of samples or products to be examined for initial inclusion on the list; (c) the specification include a provision which explains how and when products may be offered for consideration together with the criteria by which they will be evaluated; (d) the test data and certain proprietary information revealed in or resulting from the evaluation may be kept confidential; and (e) if substantive revision is needed in the controlling specification, drafts of the proposed addition or change be circulated to using agencies and to industry for comment before being made effective.

The development process for a standard specification should be essentially the same as that for a qualified products list.

In addition to providing for non-restrictiveness, specification policy should state that the purchase of commercial products is preferred over specifications which require that items be especially made, that commercial or voluntary consensus standards shall apply wherever feasible, and that unique requirements are to be avoided. It should further state that specifications shall endeavor to stress functional and performance characteristics and call for design and other requirements only to the extent necessary.

Finally, specification policy and procedure should provide for uniform formats of specification documents; i.e., uniform presentation of the elements, consistent identification (usually by numbering related to commodity codes), and adequate reference to the kind and source of the specification. Central purchasing must be responsible for final editing of the document, insuring clarity of language without jargon or in-house terminology. A specification can be unclear, confusing, and restrictive in form as well as substance.

ALTERNATIVES AND OPTIONAL ITEMS

Specification writing can influence and overlap the award process in several respects. This is another reason that buyers and technical staff need to work closely together. Relationships between specifications and the analysis of bids are discussed also in the chapter entitled "Evaluation and Award," but certain decisions regarding alternates and options have to be made in the preparation of specifications.

The expert handling of alternate specifications and optional items is one of the least studied and least policy-directed aspects of the acquisition process.

Alternate specifications are sometimes needed, in the public interest, to consider comparisons of costs or to keep awards within the funds available. Also in the public interest, they can be used to obtain wider competition, quicker deliveries, and other advantages. But they can be manipulated to exercise favoritism, as can provisions for optional items.

Optional items are features which may be adapted to a piece of basic equipment (e.g., automobiles, construction, and communications equipment) and may enhance performance or capacity, may be needed under certain circumstances, or may represent only luxury accessories. Optional items can affect significantly the total price of the equipment, and because this expense may or may not be recoverable at the time of disposition they are important cost considerations. This difficult area requires special attention on the part of purchasing personnel, but frequently is overlooked. Decisions concerning optional items should not be delayed until bids have been opened or are being evaluated for award. Careful planning and proper structuring of specifications and Requests for Bids are critical to the successful inclusion of alternates and the purchase of optional items.

FIGURE 1

Bidder	Equipment	Bid Price	Optional Items: Expected Usage Price	Optional Items: Expected Purchase Price	Total Effective Price
A	$3,300	$1,450	80%	$1,160	$4,460
B	$3,400	$1,100	80%	$ 880	$4,280

Often, however, even when prices on optional items are requested, awards are predicated on the basic equipment only with the costs of options not considered in the evaluation of bids. The prices for options dangle separately, in effect, as an agreement that the successful bidder will invoice any that are ordered at the quoted figures. This practice fails to determine which bid, options included, offers the most favorable price. To avoid this, as well as awards based largely on conjecture as to whether any options may be purchased, it is necessary that useful data be maintained as to optional items that are normally ordered and the frequency of the orders. An evaluation of this information indicates the items on which prices should be scrutinized and how the prices should be weighted in the bid evaluation. Expected usage factors can be developed for individual optional items, or a weighted factor can be used to cover all of them. These factors, as described in the RFB, are then used in comparing the bids. (See Figure 1 above.)

The total effective price is the sum of the bid prices for the basic equipment and the prices of the optional items which experience shows will likely be purchased.

Since a barrier to the proper treatment of optional items is lack of readily available historical data, such data needs to be included when building a purchasing management information system. Obviously, sound awards cannot be based on simple assumption of purchases of optional items which may or may not occur. However, usage factors for optional items which are based on historical data and updated for current estimates of anticipated needs are as reasonable and valid considerations as other budget or planning data.

A practice which can further help avoid uncertainties associated with expected usage is to request that users determine in advance their specific requirements for optional items. These requirements can then be incorporated into the Request for Bids and their costs evaluated accordingly.

SPECIFICATION FOR A SPECIAL PURPOSE

At times, it is necessary to purchase an item for an unusual purpose when no items of that kind are normally produced or marketed. For example, there may be a need for a sewing machine to instruct blind persons. Specifying the features of the most nearly acceptable, regularly available product could be highly restrictive; and a unique specification requiring the item to be custom-built would result in excessive price, extended delivery, or perhaps no bids at all because the demand for the item would not warrant retooling and special production.

A more workable approach, usually, is to solicit bids on standard production machines accompanied by a performance questionnaire which sets forth safety and similar pertinent requirements and directs the bidder to state the modifications it offers that will make the standard product most suitable for the special application. In this way, any prospective supplier can compete on the basis of an impartial evaluation of the equipment offered by all who respond.

AIDS IN PREPARING SPECIFICATIONS

As noted, it is not the purpose or role of central purchasing to write all specifications. To attempt to do so would create an unduly large and impractical bureaucracy. Central purchasing should, however, implement the rules and procedures for preparing purchase specifications or product descriptions, examine specifications for competitiveness and purchasing suitability, and enforce compliance on the part of contractors.

As a part of these duties, and as a logical matter, central purchasing usually issues standard specifications and develops the purchase descriptions for items that are covered by indefinite quantity term contracts, by definite quantity scheduled purchases, and by other contracts which central purchasing initiates. Specifications and product descriptions for requirements bought in response to purchase requisitions submitted by using agencies, or for items purchased directly by the agencies themselves under delegation from central purchasing, usually originate with the using agency unless already covered by a standard specification.

Aids in preparing specifications, therefore, are needed by both the central purchasing office and using agencies, though the kinds of aids may vary by reason of differing responsibilities.

From the standpoint of central purchasing, resources to supplement staff capabilities for specifications work fall into four general categories: product information from industry; standards and test information from national professional societies; individual specification information from other governmental jurisdictions, federal, state, and local; and, most important, knowledge and expertise from personnel of the using agencies it serves.

There is a fifth category supplementing in-house specification development which, while presently is limited, is becoming more common. As central purchasing offices are faced with the procurement of ultra-high technology, e.g., telecommunication systems, medical diagnostic apparatus, parallel processor computers, it may be necessary to contract for professional services involving drafting of specifications (and possibly assessment and recommendations in the award process). This technique can create as well as solve procurement problems.

The central purchasing staff must establish and maintain open communications with these resources in a manner that systematically gathers, culls, classifies, and makes use of the information available.

Specification advisory committees, in various product areas and consisting primarily of knowledgeable program people from various using agencies, are a necessary and invaluable part of a successful specifications program. These committees will function effectively, however, only if central purchasing exercises strong leadership. Some form of flexibility of membership is preferred to long-term standing committees.

Two relatively simple specification aids that can be highly useful to central purchasing are poorly understood and generally neglected. Both relate to specifications or product purchase descriptions which using agencies furnish with purchase requisitions. The first is to establish a general policy that agencies endeavor to express their needs in terms of functional or performance requirements. The second is for central purchasing to facilitate this practice by designing "use data" questionnaires for specific items, such as research microscopes and fork lift trucks, to be attached to agency requisitions. The thrust of the questionnaire is on how the requested product or service is to be used, and results expected. These aids help to accomplish two important objectives: diverting the attention of agency program personnel from a particular brand preference, and directing it to describing the purpose for which the item is required; and providing central purchasing with the kind of information needed to invite broader competition from prospective bidders, and establish valid criteria for evaluating responses.

The marketing programs of many businesses are geared to sales efforts made directly to using agencies rather than to or through central purchasing. In addition to creating demand for needs that may not exist, and stimulating unwarranted preferences for particular brands or sellers, the practice frequently has the improper consequences of a seller drafting or writing a purchase specification. This represents a violation of law in some jurisdictions; but if law does not apply, there should be written policy to the effect that where an agent or representative of a manufacturer or prospective bidder participates in the preparation of a purchase specification, bids submitted on that product or service, or from that bidder, under the ensuing solicitation will not be considered for award. While information and advice are needed from industry and sellers, vendor drafting of specifications prejudices the rights of other prospective bidders and the public. This is an aid that should not be allowed. Some larger central purchasing offices have partially overcome this problem by employing staff specialists, often persons with industrial engineering training, to give on-site assistance to using agencies in preparing purchase requisitions for such requirements as word processing installations, copy centers, and science furniture and food service installations.

A particularly helpful specifications aid for the purchasing program can be found in the expertise and testing capabilities of colleges and universities, especially technical institutions. The most productive way to use these resources is to establish an agreement, formal or informal, between the central purchasing office and the college administration. Outside the government community, and in addition to groups already referred to, there are many industrial trade associations and independent research and testing organizations which can supply up-to-date technical information on a regular basis across a full range of product areas.

COOPERATION AND COORDINATION AT THE NATIONAL LEVEL

There is a great deal of duplication among state and local governments in their specifications programs. A certain amount of this is desirable and valuable — it allows for different approaches to problems, takes advantage of diverse trial and error, and leads to greater innovation. On the negative side, much of the duplication is wasteful.

For a number of years, public purchasing officials have declared that a cooperative standards and specifications effort on a national level, coupled with an efficient system of information interchange, would be a highly beneficial undertaking that could result in significant advances and savings. Recently, at the urging of The National Association of State Purchasing Officials and the American Society for Testing Materials (ASTM), the International Coalition for Procurement Standards was formed. Its membership includes representatives from NASPO, The National Institute of Governmental Purchasing, The National Association of Educational Buyers, The National Bureau of Standards, The Department of Defense, The Federal Supply Service, The U. S. Department of Agriculture, The Canadian General Standards Board, and numerous other public and private entities, as well as interested private citizens. A coordinator appointed by ASTM performs the duties of Secretary of the Coalition whose duties include publication of the Coalition's Quarterly Bulletin as well as those normally performed by an organization's Secretary.

The purpose of the Coalition is to bring representatives of National and International Purchasing Associations and their affiliates into an organization through which they can communicate, cooperate, and join in the activities of recognized standards organizations, and participate in the development of voluntary consensus standards.

Specific objectives of the Coalition are:

- To encourage participation by its members in the activities of all consensus standard organizations;
- To initiate, through interaction with consensus standards organizations, the formulation of standards, specifications, and test methods where none currently exist;
- To aid in the revision and updating of existing standards, specifications, and test methods;
- To cooperate with other members of the Coalition to avoid duplication of effort; and
- To promote and encourage the professional development of its members.

Many members of ICPS regularly serve on committees at ASTM, American National Standards Institute, and other Voluntary Consensus Standards organizations.

VOLUNTARY CONSENSUS STANDARDS AND MANDATORY STANDARDS

Consensus standards are those developed with the cooperation of all concerned. Producers, users, ultimate consumers, and representatives of government and academia all may have a voice in their development. However, an additional distinction exists between voluntary and mandatory standards.

Voluntary standards are so named because their use is voluntary. In turn, the degree to which they are used hinges on the benefits they provide.

Mandatory standards, on the other hand, are documents made legally binding by government action. They may be developed and promulgated by a government agency, such as the Environmental Protection Agency's standard for smokestack sulfur emissions, or they may be consensus standards adopted or referenced by a government body. Local building codes, for example, have adopted and made mandatory hundreds of standards developed by ASTM and other organizations.

Government's role in developing standards raises an important question: Why are some standards developed by a consensus of interested parties and others by unilateral government action? One answer is because some standardization problems yield only to mandatory government standards. A historical example involves railroad track gage in America. By law, the distance between rails of track is 4 feet, 8 1/2 inches. Such uniformity permits the interchangeability of rolling stock on different railway lines.

When the railroad was introduced in America, however, there was no commonly accepted standard for uniform track gage. At one time, there were 33 different gages in use, preventing the unification of the nation's railroads. In 1863, Congress enacted legislation mandating uniform track gage, and by the mid-1880's the conversion was complete. It is easy to see, in retrospect, that it may have taken much longer to achieve a consensus standard on uniform track gage among civil engineers, railroads, and the builders of engines and rolling stock.

Nonetheless, despite its advisability in some instances, unilateral standards development by any single interest is generally not as desirable a procedure as the consensus approach.

As an example of cooperation in the development of voluntary standards, an organizational meeting of ASTM Committee F-10 was held on December 2 and 3, 1986. The Committee was organized at the request of the Department of Defense and through the joint efforts of NASPO, ICPS, DOD, and Research and Development Associates for Military Food and Package Systems Inc.

This Committee is developing standards across the entire spectrum of food and subsistence items offered for sale not only to the federal government and other government entities but also to all types and kinds of institutional buyers and the general public. The results of its work will be to provide "Commercial Standards" which assure desired quality while eliminating divergent and unnecessary factors that add costs for suppliers and users alike.

7. Acquisition: Competitive Solicitations, General

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Authorize acquisition of goods and services by use of competitive sealed bidding (including multi-step bidding), competitive negotiation, and procedures for making small purchases, emergency purchases, and sole source procurement, under rules to be adopted for these methods.

Require competition for all purchases, including rentals and leases, except as may be permitted otherwise by rule and regulation.

Provide that central purchasing may determine items that can be purchased more advantageously by deletion from a construction contract.

Grant broad administrative discretion as to when bid and performance surety will be required and what is acceptable surety, except in the case of construction and other public works contracts.

Require rules for determining responsibility of bidders.

Authorize confidentiality of certain types of information under rules established for the purpose. Authorization may be in a Public Information Act instead of the purchasing statute. Locus is not important, the statutory concept is.

Authorize central purchasing to reject any and all bids, in whole or in part, or accept a single bid response, in accordance with rules and regulations.

Authorize pre-qualification of bidders and require rules, including documentation, for suspension and debarment.

Authorize progress payments and installment payments as provided by rule.

Recommended Regulatory Coverage

The rules or regulations to implement the statute should:

Require that central purchasing establish a list of prospective bidders, and that it be categorized and maintained in a manner to solicit adequate response and insure equity of opportunity among prospective bidders.

Require standard formats for the solicitation of bids and proposals.

Establish procedures governing public notice of intended purchases including sole source, and receipt and public opening of bids and proposals; and authorizing a waiver of public notice under defined conditions.

Provide procedures for effecting modification and termination of contracts.

Set forth policies with respect to receipt of inadequate number of bids, unsolicited alternate bids, and unsolicited "all-or-nothing" bids.

Provide that any written summaries of bidders' conferences be sent to all prospective bidders, and designate conditions under which site visit or attendance at a bidders' conference may be made a pre-requisite to consideration of bids or offers.

Authorize the purchasing office to request bidders to extend time they designate for acceptance of bids, if necessary, to complete evaluation and award of contract.

Recommended Practices

Except for construction work, use of bid or performance bonds should not be the general practice.

The bidder's application form should be periodically reviewed for revision, and consideration given to providing space for product history, capabilities for service, and other pertinent information.

There should be a written description of the organization, structure, and maintenance of the bidders list, including criteria for evaluating applications and procedures for removal and reinstatement.

Procedures for conducting bidders' conferences should be set out in writing.

The bidders list, responses to solicitations, and vendor performance should be maintained on automated data processing equipment, and the list should not be available to persons or groups for promotional or other mailing lists uses, or for political or private gain.

Criteria should be established for accepting or rejecting individual bids or proposals and for rejecting all responses.

Any substantive information furnished to a prospective bidder regarding a solicitation shall also be supplied to other prospective bidders.

The great majority — perhaps 85 percent or more — of the expenditures by state and local governments for goods and services result from competitive solicitation. Three methods are used: competitive sealed bidding, competitive quotations involving amounts less than the minimum figure for which sealed bidding is required, and competitive negotiation. The balance consists of emergency purchases, sole source purchases which are too small to justify obtaining competition, and miscellaneous non-competitive acquisitions such as a purchase from another governmental unit.

Numerous techniques and procedures, e.g., the use of bidders lists, are common to all forms of competitive solicitations. Other elements, as in calling for bonds, may be characteristic of some kinds of purchases and used less frequently in others. This chapter discusses various aspects of competitive solicitations which have, or can have, general application to any purchase.

The instrument for soliciting competitive sealed bids is commonly designated as an Invitation for Bids (IFB), for competitive quotations as a Request for Quotation (RFQ), and for competitive negotiation as a Request for Proposal (RFP). The document for soliciting competitive bids on the sale of surplus property is typically referred to as a Request for Sale Bid.

PUBLIC NOTICE

Many state and local governments require, usually by statute or ordinance, that purchases expected to exceed an amount established by law be given public notice in the form of newspaper legal advertisement. Some jurisdictions have commerce publications or public registers and require announcements placed in them. These notifications are not highly useful in generating competition; but in declaring publicly what is being bought or sold and when, how, and where bids can be submitted. They contribute to the openness of the public purchasing process.

Just as sealed bids are required to be publicly opened, law should require some form of public notice of any intended competitive or sole source purchase of a significant amount. The specific amount above which the notice must be given should be designated in the governing law, together with the length of time, such as 10 days, that the notice must precede the date for opening of bids. Other details of the announcement, however, are better covered by rules and regulations. The implementing rules should specify that the notice include at least a brief description of the article or service being sought, the time and place set for the opening of bids or proposals, how the solicitation documents may be obtained, and whether a fee or deposit applies.

WAIVING PUBLIC NOTICE

There are circumstances other than emergencies which call for quick procurement action. Supplies or equipment may be needed promptly for back-up to help insure against downtime; a significant price increase on a needed item may be imminent; the scope of an ongoing task may be unexpectedly expanded. In these situations, there is usually time to obtain written competition, perhaps even sealed bids, but not enough time for a seven- or ten-day or longer previous announcement. Statute or rule should authorize waiver of public notice upon written determination of necessity by the chief purchasing officer in such cases.

BIDDERS LISTS

"Bidders list," sometimes called a "vendors list," is used here as the broad term for a list of prospective suppliers for any style of solicitation, whether quotations, sealed bids, proposals, or sale bids. In composition, a bidders list consists of many individual lists representing vendors of different kinds of goods and services, and its meaning is the same when referred to in the singular "list" or plural "lists."

For day-to-day operations, direct mailings according to bidders lists are the only practical, effective means for canvassing the market. Other methods may be used separately for unusual requirements or circumstances to supplement a bidders list or search for new sources of supply. These include: constructing a special mailing list from manufacturers' directories, small business and minority business listings, etc., making telephone inquiries, inserting special newspaper advertisements, and placing notices in trade journals and other specialized publications or services.

Bidders lists should be available as public information, but their use for commercial or private advertising, marketing, or promotional purposes should be prohibited by statute or ordinance.

The relative effectiveness and efficiency of the bidders list depend largely upon the concepts under which it is established and maintained.

Establishing the Bidders List

The purpose of a bidders list should be to canvass prospective sources of supply accurately and efficiently. To this end, there must be means for identifying prospective suppliers, categorizing them according to goods and services they can furnish, and for avoiding unproductive and wasteful solicitations.

Identifying Sources of Supply

In certain respects, a bidders list comes about of its own accord, as a natural result of buyers needing sellers and sellers seeking customers. In a public purchasing program where competitive bidding is required on a large variety of items, good management practices dictate that the list be handled in some planned, systematic manner.

Prospective sources of supply are identified by initiatives on the part of both the purchasing offices and vendors. The public purchasing office has the duty to seek a full range of competition for its requirements and should have an organized, ongoing program for adding qualified suppliers to its bidders list. The office should have access to standard publications, such as Thomas' *Register of American Manufacturers* and the *Chicago Buyer's Guide*, which catalog producers and marketers of many types of commodities. Periodic review should be made of each major commodity group to ascertain the degree of competition being realized, changes in market conditions which affect competition, and specific actions for increasing competition. The public interest is not met

by mere routine solicitation or an assumption that the current degree of competition is sufficient. Purchasing has the duty both to solicit and to obtain representative, available competition. Regular efforts to locate new sources of supply are a vital part of this responsibility. Central purchasing offices have an obligation to attract responsible suppliers to bid on government business.

Businesses which wish to sell to a government frequently institute requests to be placed on the bidders list. The purchasing office should develop a specific form for this purpose, customarily designated as an Application for Bidders (or Vendors) List. The form should provide spaces for information requested of the applicant. Verbal requests to be included on the bidders list should be confirmed by submission of the application form, and if the application is not accepted or approved, the applicant should be so notified.

Pre-qualification

Some statutes, or rules and/or regulations, which have the effect of law, designate that solicitations for competitive bids be made from qualified sources of supply. This language may imply pre-qualification, or the statute or regulation may specifically authorize the pre-qualification of bidders, as in the case of the American Bar Association *Model Procurement Code*. In some jurisdictions, pre-qualification is used on the basis of administrative procedure, but this may not represent sufficient authority for the practice.

Pre-qualification is best accomplished through the Application for Bidders List, and the purpose is threefold. One purpose is to help assure that the applicant is a proper legal entity entitled to do business in the jurisdiction, e.g., certain prior licensing or registration may be necessary. Purchasing offices should seek to avoid soliciting bids from businesses engaged in unlawful practices, associated with organized crime, or operating under false names, or representing themselves fraudulently as ethnic, minority, women-owned, or handicapped firms. More than four-fifths of the states have written criteria for including applicants on bidders lists.

Another purpose for pre-qualification is to help insure performance capabilities. If the purchase of a particular commodity requires local or regional commercial warehousing with service or maintenance personnel, a mail order firm located across the country does not meet the need. A firm with a net worth of less than $20,000 would not likely be qualified for award of a $1,500,000 contract. Pre-qualification criteria should be clear and purposeful. Producers of drugs and pharmaceuticals, for example, may be asked for evidence of their quality control measures. It should be remembered that occasionally the product, rather than the bidder, may be the question for qualification. This can apply where a well-established firm asks to be included on the bidders list in a category where it intends to offer a newly introduced and untested item.

A third reason for pre-qualification is to promote economy, effectiveness, and efficiency by preventing unnecessary costs of printing and mailing, and by receiving a favorable return on the effort and expense of issuing requests for bids, proposals, and quotations.

A bidders list should not be looked upon merely as a mailing list. A mailing list is appropriate for disseminating information, whereas a bidders list is for the purpose of eliciting competition. An effective bidders list does this with a minimum of waste and administrative expense.

Neither pre-qualification criteria nor a pre-qualification procedure should be construed or used as a conclusive determination of bidder responsibility. Also, pre-qualification should not be used to establish or exercise preferences for resident bidders.

Categorizing the Bidders List

A public purchasing office buys tens of thousands of different items, and the names of bidders eligible to compete frequently number 8,000 to 12,000. In order to get requests for bids into the hands of prospective suppliers who can be responsive to the particular item or service needed, the bidders list should be divided into categories and subcategories. The extent to which major commodity classes and groups need to be subdivided depends heavily on the nature of the item and on the responses received to solicitations.

As a general rule, the bidders list commodity breakdown should extend to that classification level which consistently produces a good return on bid solicitations. An objective can be established, such as an average of 50 percent responsive bidding, below which a bidders list is considered inadequately categorized. In structuring the bidders list, major commodity classification groupings must first be defined. These grouping should reflect the particular function with which a group of products is commonly associated. Too frequently, this first order of classification is so general that it bears little specific relationship to items in the group (e.g., machinery, which encompasses farm machinery, food processing equipment, concrete machinery, and many others). Different categories of suppliers would thereby be included in too broad a classification. Rather than group all truck suppliers under one heading, for instance, the list should contain specific breakdowns such as "four-wheel drive trucks," "pickup trucks," "tractor trucks," etc.

Classifications become further serviceable to the extent that related products and suppliers are closely matched. This is done by degrees of refinement. The classification "floor maintenance machines" can be subdivided into item codes covering brushes and pads, edgers and sanders, power brooms, scrubbing machines, vacuum cleaners, etc. Each broad classification must be analyzed to determine the proper level of detail for the products it covers.

Product function also should be considered in refining classification groups. When a product is sufficiently unique that variations in style, size, and quality do not

materially affect its functional purpose and performance, only one item code need be assigned. For example, steel drums are available in many sizes and shapes, but they all serve a similar function which is rarely affected by their shapes and sizes. By contrast, generators are produced in varieties which may perform quite different functions. As another application of this principle, one state has identified 700 categories of professional services.

Rotating bidders lists, whereby prospective bidders receive only some of the requests for bids in a category for which they are listed, is not recommended other than for very small-dollar purchases. If there are too many listings to solicit all of them when a requirement arises, the list is likely too broadly categorized or out-of-date. Rotating bidders lists systematically reduces competition and may be illegal. The solution lies in better management of the list to provide both equity and economy. More than 72 percent of the states report they do not use rotational bidding.

Bidding according to geographic areas, on the other hand, is practiced by more than half of the states. This is appropriate where the nature of an item is local in character, such as ready-mixed concrete or repair work, or where local service is needed frequently and promptly. Regional bidding encourages participation by small business in government contracts and can enhance competition.

Commodities such as gasoline and fuel oil can be bid for local delivery through a statewide contract. This technique recognizes geographic variation in larger jurisdictions, and encourages businesses from throughout the jurisdiction to participate in the opportunities offered by these large contracts.

MAINTAINING THE BIDDERS LIST

State and local governments are rapidly automating business and office procedures. For purchasing programs, this includes computerized commodity classification systems which can substantially improve the accuracy and management of bidders lists. A computerized vendor database system provides significant assistance in managing bidders' lists and providing vendor specific information.

The bidders list database should be housed in central purchasing and cross-indexed by commodity codes and the names of the prospective suppliers. The database should include a unique number to identify each vendor. Many jurisdictions are currently using the federal taxpayer identification number for this purpose. The database can also include descriptive information about each vendor, such as size, minority status, product point of origin, and other necessary factors.

Effectively maintaining the bidders list involves three general functions: adding new suppliers to provide increased competition, modifying and refining commodity groupings for more accuracy and efficiency, and removing prospective suppliers who fail to bid or whose performance is unsatisfactory.

Seeking new sources of supply for the bidders list is essentially the responsibility of individual purchasing managers who are most familiar with particular markets and product lines. Fostering competition is a basic duty of the public purchasing professional.

The development of commodity coding systems by state and local purchasing offices has proceeded slowly over the years, accelerating only recently. This may have been fortunate if the systems prove to be compatible with continuing advancements in computer technology. Bidders lists which are maintained on computers in conjunction with computerized commodity classification systems are more easily modified and refined than manual or semi-automated systems. Recent developments, therefore, should bring improvements in the precision and efficacy of the system.

Removing prospective suppliers from the bidders list is a sensitive issue. Statutes should specifically authorize that suppliers may be suspended and barred from consideration for award of contracts, and require the issuance of implementing rules and regulations for due process formulated with the advice and concurrence of the attorney general or other legal counsel.

Among the reasons for removing a prospective supplier from the bidders list are repeated failure to bid, or to bid responsively, and failure to meet contract specifications, or, otherwise, to render satisfactory performance.

Central purchasing should establish a vendor file to collect information for periodic reviews of bidders' responsiveness, performance, and capabilities. This is properly part of an automated purchasing management information system. Data concerning responses to requests for bids are generated within purchasing. Commonly, three or more consecutive failures to bid, or to acknowledge receipt of invitations, are considered grounds for removing a bidder from the list. Performance as a supplier can, to some extent, be measured by central purchasing agents, but reliable information is needed also from using agencies. Matters such as failure to meet delivery dates, failure to meet specifications, and failure to keep promises should be documented by agencies in the form of written reports to central purchasing, or by sending copies to central purchasing of complaints made directly to vendors. Purchasing may need to act at any time on these types of incidents, and the reports, as well as a record of all actions and their outcome, should be entered in the vendor performance file. Generally, little has been done in most jurisdictions to develop and document reports on vendor performance, and even less has been done to establish standards of performance. Lacking such necessary information, purchasing officials often are reluctant to remove bidders from the list. **Just as there is need for standards of ethics and professional conduct for purchasing officials, there is need for standards for suppliers.** The standards should provide for penalties, sanctions, or other disciplinary action, including suspension and debarment, for violations.

Whatever the grounds for deleting bidders from the list, the seriousness of the action requires safeguards to protect the integrity of the lists and the rights of the bidders. Recommended procedures include:

- When removal is to be for cause (unsatisfactory performance, violation of standards), the chief purchasing officer should review and confirm all reasons and evidence supporting the proposed action and make the final decision.
- When removal from the list appears to be justified, the chief purchasing official should inform the supplier in writing, and include information as to how the decision can be appealed.
- When removal is to be based on failure to bid, it should be confined to the listing for the particular items involved.
- There should be complete documentation of the reasons for this action, any contacts with the supplier, and a record of the review and approval by the chief purchasing official.

When a supplier has been removed from the bidders list only for inactivity in bidding, reinstatement to active status should be considered upon receipt of a new appliation. The act of refiling for inclusion on the list usually can be considered sufficient evidence of renewed interest in doing business with the jurisdiction. This is the policy of most state and local governments.

Reinstatement becomes more complex when a supplier has been removed for cause. Good business practice requires that a supplier be reinstated only on evidence that the problems that caused removal have been corrected. Case law suggests that debarment or suspension must be for a finite period. A review is in order at the end of the period.

Rules should provide guidelines for suspension, debarment, and reinstatement, and should allow flexibility where the need for competition is a factor. If an item is available from only one or two suppliers, different approaches are necessary in applying disciplinary actions and, at the same time, preserving competition, or maintaining the single source of supply. It is inadvisable, therefore, to arbitrarily establish standard suspension and debarment periods. Instead, it is more appropriate to provide general direction and constraints, and permit the chief purchasing officer to determine the most appropriate action in individual cases.

BONDS

Requiring bonds as a part of the bidding and award process, and as applicable until completion of a contract, is intended as protection for the taxpayer against bad faith or failure on the part of bidders and contractors. Historically, bonds have been required by statute for construction and public works projects. They are not as often mandatory for contracts for equipment, supplies, and services.

Bid security, or a "bid bond," affords protection against a bid being withdrawn after bids have been opened. It is a representation that the bid is submitted in good faith. The amount of the bond required is either a proportion of the amount of the bid, usually 5 to 10 percent, or it may be a specific dollar amount. The security is retained until award of a contract, or if no award is made, until the bids may be withdrawn. A number of jurisdictions provide for an annual bid bond to eliminate the frequency and repetitiveness of submissions.

Payment bonds are used almost exclusively for construction contracts. They guarantee payments by the successful bidder to material suppliers and subcontractors. As a rule, the bond is equal to 100 percent of the amount of the contract, with provision for reduction as work progresses, and the contractor makes payments to his suppliers and subcontractors.

Performance bonds are invariably required for public works contracts and not infrequently on contracts for equipment and services. The bonds are furnished by a properly licensed surety company and provide for fulfillment of the contract obligations by others in the event of default by the successful bidder. As with payment bonds, the amount of a performance bond is usually 100 percent of the amount of the contract and may be reduced proportionately as performance under the contract moves forward successfully. A different form of protection, and one which can reduce costs to the successful bidder and the purchaser, is to allow the contractor to post a certificate of deposit or letter of credit payable to the jurisdiction and on which he collects interest if the contract is performed satisfactorily.

A few jurisdictions require an annual blanket performance bond in a nominal amount, $5,000 or less, as a condition of being included on the bidders list, with the bond applying against any awards made to the bidder during the period the bond is in effect. This is an unusual procedure and there is no evidence the practice is growing.

Every jurisdiction should develop and use a standard form for each of the three types of bonds. Suggested forms can be found in the American Bar Association Model Procurement Code.

Other than where mandatory for construction work, approximately 90 percent of the states allow bid security and performance bonds at the discretion of the chief purchasing officer. This policy is recommended. It is not necessary to require a bond of any type for many bids or purchases. Since the cost of bonds is passed on to the purchaser, unnecessary bonding is an unnecessary expense to the public. Invoking a bond is an investment in time and money for a jurisdiction. Also, requirements for bonding often present difficulties for small and disadvantaged businesses, and otherwise can be impediments to competition.

PRE-BID AND PRE-SOLICITATION CONFERENCES

The value of bidders conferences is being recognized increasingly throughout public purchasing. These are usually held following a solicitation for bids or offers and prior to submission and opening, but may also be held before a solicitation is issued.

The purpose of the bidders (or more correctly, prospective bidders) conference is to promote competition. The conference provides a forum for buyer and interested sellers to discuss the buyer's needs and purposes, facilitating a clear understanding and the submission of bids or offers that are responsive and competitive.

Conducting a pre-bid conference involves notification to prospective bidders by central purchasing of the place and time of the meeting, a review of the provisions and the solicitation, and anticipation that modifications to the solicitation may result. Central purchasing should direct the meeting, and if the requirement is for a specific using agency, the agency should be represented by personnel most familiar with the need.

When the conference is held after issuance of the solicitation and before submission of bids, and especially where the conference is linked to site examinations or a tour of premises, the purchasing office may designate that attendance at the conference is a pre-requisite to the consideration of any bid or offer submitted.

Policy and procedures for conducting bidders conferences should be set forth in writing by the central purchasing office, although this is now the case in less than two-fifths of the states. It is advisable to record the pre-bid conference to check to insure that all substantive questions are answered in the subsequent notice of modification(s) to the bidders/proposers.

CHANGES IN SOLICITATIONS

Circumstances can arise which call for a change in the solicitation for bids or proposals. Frequently, this is the result of issues raised at a pre-bid conference. The majority of these modifications can be accomplished by issuing addenda or amendments to cover such matters as altering quantity or delivery requirements, modifying specifications, extending the date for opening, etc. The addenda are mailed, or otherwise directed, to all prospective bidders known to have received the solicitation, and a signed copy of any addendum should be attached to the bid submitted as indication it was received and noted. In rare instances where time does not permit this procedure, an addendum may have to be communicated to prospective bidders by telegram or telephone, in which case receipt of the information should be acknowledged as a part of the bid submission.

Care must be exercised at all times not to give a bidder pertinent information, verbal or written, regarding an invitation that is not given also to all other prospective suppliers.

The addendum or amendment procedure should be used also when a solicitation is canceled, either before or after the opening bids.

Another change relating to solicitations may involve the length of time provided or allowed after opening for the consideration of a bid or offer. Where testing or other factors delay evaluation such that the acceptance time may expire, the purchasing office should be authorized to request the bidder to allow an extension sufficient to make the determination for award.

RESPONSIBILITY OF BIDDERS

Some 86 percent of the states currently have written guidelines for determining whether a bidder is responsible. Some of these are delineated by statute, others by rule or regulation or administrative procedure. The Model Purchasing Ordinance of the National Institute of Municipal Law Officers lists 15 factors to be considered in determining responsibility. The American Bar Association Model Procurement Code refers in *Commentary* to "financial ability (of the bidder), resources, skills, capability, and business integrity necessary to perform the contract."

The ability required to fulfill a contract, including the rendering of subsequent and continuing service if specified, varies substantially with the nature, size, and complexity of different contracts. A bidder who may be responsible in connection with one contract may not be responsible with respect to a different, or larger, one. A pre-qualification procedure for the bidders list can be helpful in making these distinctions.

During the consideration of bids and proposals, it may be advisable or necessary to obtain information to assist in determining responsibility. Refusal by a bidder to furnish such information when requested, or failure to supply it in time, can be grounds for a finding of non-responsibility.

Purchasing law should not permit award of a public contract knowingly to a non-responsible bidder or offeror. It is not desirable for a statute to attempt to spell out all factors relating to responsibility, but it should require that standards of responsibility be set forth by rule or regulation.

When a bidder or offeror would be awarded a contract except for a finding of non-responsibility, the reasons for the determination should be documented as part of the file and a copy of the determination sent to the bidder or offeror setting forth provisions for due process.

CONSIDERATION OR REJECTION OF BIDS AND PROPOSALS

Statute law should provide that any and all bids or proposals may be rejected in whole or in part in accordance with rules and regulations formulated for this purpose. The rules, regulations, and subsequent actions must, however, be based upon sound reasons. Bids or proposals may not be rejected arbitrarily, or by whim or caprice.

Technically, any bid or proposal that is not accepted is considered to have been rejected. Rejection of an individual bid or proposal because of non-responsiveness, non-responsibility, or high price is generally understood. In some cases, these reasons might apply also to all bids or proposals received. Other causes for rejection of all bids or proposals can include lack of competitiveness because of apparent or suspected collusion, errors in specifications or indication that revision would be to the public advantage, the solicitation not providing adequate criteria for the evaluation of responses, limitation or lack of available funds, and changes in the intended project, or determination that the proposed requirement is no longer needed.

A bidder has the right to have his offer receive fair and equitable consideration. However, there are circumstances under which a bid or proposal may be submitted that can adversely affect its consideration other than conventional factors associated with responsibility, responsiveness, and price.

Only One Bid Received

Where only a single acceptable bid or proposal is received, the purchasing office should inquire as to the reasons for the lack of competition. Based upon the information developed, the single bid or proposal may be accepted or rejected. The public is entitled to available competition, and if reasonable competition can be expected by resolicitation, that course can be taken. On the other hand, if the single bid or proposal submitted is acceptable and advantageous to the purchaser, and other potential competitors had full opportunity and chose not to respond, the one bid or proposal can be accepted.

Alternate Bids or Proposals

Alternate bids or proposals, and two or more bids or proposals from the same vendor, can take many forms and present perplexing questions. Often alternate bids or proposals are simply non-responsive and cannot be accepted. Otherwise, as a general rule, only the base bid or proposal submitted should be given consideration unless the invitation specifically provides for alternate offers. Where alternates result from ambiguous or faulty specifications or other deficiency of the invitation, all bids should be rejected and the solicitation rewritten and reissued.

"All-or-None" Bids

A bidder sometimes unilaterally imposes a condition that the bid is as an "all-or-none" offer — that is, that any acceptance of the bid must include all items offered. Such a condition affords the bidder an inequitable advantage and contradicts the normal provision that the purchaser may accept any item or group of items in the invitation. Bids submitted with this condition should be rejected except where the solicitation invites all bidders to compete on an "all-or-none" basis by so providing in the solicitation.

A similar limitation is imposed when a bid or proposal is conditioned upon receiving the award of both the contract in question and another contract. Such "tying" bids together is another means of seeking an undue competitive advantage, and unless specifically permitted by the invitation such bids must be considered as not acceptable.

NEGOTIATION FOLLOWING REJECTION

When it is in the public interest to reject all bids or proposals, in whole or in part, the purchasing statute should authorize, among alternative actions that may be taken, the negotiation of a contract to better advantage in the open market. This course is especially necessary when collusion or other anti-competitive practices thwart normal competitive procedures and there is evidence that resolicitation would be a waste of time and effort.

CHANGES IN CONTRACTS

Changes during the performance of a contract are usually accomplished by issuance of a change order, or a modification to a purchase order, by issuance of a stop-work or termination notice, or by a renewal or extension of the contract. Changes are more common and permissible in construction, and public works contracts than in contracts for equipment, supplies, and services.

The central purchasing office should have standard forms for issuing change orders and modifications to purchase orders, and should develop standard contract clauses covering price adjustments, changes in quantity, stop-work orders, termination, and liquidated damages. The standard clauses need not be used exclusively, and should be adapted as may be needed for different circumstances and varying market conditions.

Termination can be brought about by default on the part of the contractor or for the convenience of the purchaser. It often involves monetary damages or cancellation charges, and how these will be determined and applied should be set forth clearly by contract clauses. The authority of a public officer to negotiate for damages or penalties should be ascertained specifically in each jurisdiction. This can present an unanticipated legal question. In many jurisdictions the purchasing officer may lack necessary constitutional or legislative authorization to agree to or pay termination charges, liquidated damages, or finance charges for late payment of invoices.

Other aspects of contract changes also need careful review as to legality. For example, requirements for competitive bidding can usually be protected if an increase in quantity under a contract for equipment, materials, or supplies does not exceed 10 percent. Where competitive bidding is required, courts have not allowed the renewal of contracts by mutual agreement between the jurisdiction and the contractor. Such action would have the effect of non-competitive negotiation, and to adhere to requirements for competition, a provision for renewal of contracts should be *only* at the option of the state or local government, with documentation that the renewal is in the best interest of the jurisdiction.

OTHER GENERAL CONSIDERATIONS

Deleting Items From Construction Contracts

As noted earlier, substantial economies often are realized by purchasing various types of equipment and supplies separately rather than including them in building contracts. Such items range from light bulbs and tubes to venetian blinds and x-ray equipment. Statute and implementing rules and regulations should authorize central purchasing to determine when equipment and supplies should be deleted or acquired separately from a contract for construction. The decision should rest with central purchasing as most knowledgeable of the market.

Advance Payments, Progress Payments

As a general rule, payments in advance of work performed should be avoided in public contracting. Responsible bidders and contractors are presumed to have the financial resources to undertake the contracts for which they bid. Progress and partial payments for work completed, however, are in order for some types of requirements particularly for a substantial and costly items where the contractor may have to obtain expensive and specially fabricated components, as in the purchase of a large crane for a port authority. Advance or progress payments, where authorized by statute or rule, may greatly facilitate small/minority business programs. Progress payments should not exceed the value of work performed at the times of payment, with a reasonable amount of the total contract price withheld until delivery and final acceptance of the product or service is contracted for.

Any advance or partial payment should be considered only to the extent legally permissible and where protected by adequate collateral.

Installment Purchases and Lease-To-Purchase Transactions

Several types of equipment carry such high prices that outright purchase may not be feasible or possible at the time the equipment is needed. Among these can be complex hospital diagnostic equipment and computer installations. In such cases, installment purchase may be the logical and satisfactory method of acquisition, and central purchasing should be authorized to contract for installment payments, including payment of interest. At the same time, the authorization should make the administrative head of the user agency responsible for certifying to central purchasing that: (a) the request for an installment purchase is not to avoid the appropriations or budgetary process, and (b) statutory or other prohibitions are not being violated. To effect an installment purchase properly, the solicitation must provide for competition, for installment payments, and for termination of the contract if funds for continuation are not available.

Confidentiality

The purchasing process has to request or require information from time to time that can be correctly construed as proprietary. Such information may relate to financial records and responsibility, manufacturing drawings, formulas, and processes, contractor agreements with suppliers and subcontractors, test data, etc. To promote competition and protect valid interests, the purchasing statute should clearly authorize that such data shall remain confidential. The competitive bidding process should not be a means for competitors to obtain private or similar information that is not otherwise normally available.

Rules and regulations implementing the statutory authorization should provide that bidders and offerors may request that certain material they submit remain confidential, with the final decision as to validity of a request resting with the chief purchasing officer. A jurisdiction's Public Information Act may require revision or amendment to accommodate the confidentiality of "trade secrets." Failure to accommodate to this requirement may restrict competition or eliminate innovation and ingenuity on the part of bidders/proposers to the financial disadvantage of the jurisdiction.

8. Acquisition: Competitive Methods

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Establish the dollar amount above which competitive sealed bidding, including multi-step bidding or competitive negotiations, is required, or authorize the amount to be set by rule.
State that competitive bidding is the preferred method of procurement and use of any other method requires written justification by the chief purchasing official.
Require competition in making small purchases, subject to applicable rules.
Authorize waiver of minor irregularities and require rules governing mistakes in quotations, bids, and proposals.
Require that information conveyed by public reading, tabulating, or abstracting of bids at public opening be a public record at the time of opening, and that bid documents and the remainder of the file be made publicly available following award of contract, subject to provision for confidentiality of proprietary and similar data as defined by rule and regulation.
Require adoption of rules governing telephone, telegraph bids, facsimile, and late bids.
Require that services be acquired through one of the established purchasing methods under rules provided.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Identify and define competitive processes to carry out the several procurement methods.
Stipulate that ideas or information submitted in a technical proposal under multi-step bidding and competitive negotiation cannot be used in negotiating with another bidder or proposer.
Require the use of competitive solicitation, where possible, in the purchase of services, and stipulate that in obtaining professional services competence is to be given greater consideration than price.
Require that a public record be kept of vendors solicited and responses received on competitive quotations.

Recommended Practices

Seek at least three quotations on small purchases.
Use competitive sealed bidding if advantageous even when amount of purchase is less than required for that procedure.
Time stamp bids and proposals upon receipt.
Have one or more witnesses present at bid openings.
Once notification has been given to submit best and final offers under competitive negotiation, exercise extreme care to adhere to this condition and do not extend the designated time or call for new submissions except under peremptory circumstances.

Competitive procedures used for public contracting by state and local governments fall broadly into three categories: competitive sealed bidding (which includes multi-step bidding), competitive quotations (or informal bidding), and competitive negotiation. In the following discussion, these are taken in the order of importance accorded them in law or in current practice, while recognizing that the use of multi-step bidding and competitive negotiations is increasing.

COMPETITIVE SEALED BIDDING

This procedure is also referred to as "competitive bidding" (e.g., National Institute of Municipal Law Officers' (NIMLO) Model Purchasing Ordinance), "competitive sealed bidding" (The American Bar Association Model Procurement Code, §3-202), "formal advertising" (Federal Procurement and Acquisition Regulations), and often generically as "sealed bidding" or "formal bidding." These terms are synonymous, with the exception of "formal advertising." Certain fundamental differences have developed between competitive bidding as practiced by state and local governments and formal advertising as practiced by the federal government.

Competitive sealed bidding is the standard method for acquisition of goods and services by state and local governments. As the commentary accompanying the American Bar Association Model Procurement Code points out: "Competitive sealed bidding . . . is the preferred method of procurement." It is usually a statutory requirement, and until recently, there was seldom any other method authorized as a preferred procedure. This applies to definite quantity and indefinite quantity contracts alike. In general, purchase by negotiation is permissible only under limited circumstances when competitive bidding is not practical or possible.

Once a need is established, whether for an individual, "open market" purchase, a schedule purchase, or a term

contract, central purchasing initiates the competitive sealed bidding procedure by preparing and issuing a Request for Bid (RFB). The RFB should be designed with four overall purposes in mind: (1) to protect the public interest; (2) to attract competition for furnishing the product or service; (3) to allow prospective bidders to compete on an equitable basis; and (4) to serve as the essence for a contractual agreement upon award.

There should be no statutory or regulatory conditions or prerequisites for the use of competitive sealed bidding. In contrast to the federal system, state and local governments do not impose conditions for use. It is significant to note that state and local governments typically make some 85 percent or more of their purchases under competitive bidding, whereas estimates have placed purchases by the federal government under its formal advertising procedure at less than 10 percent in dollars expended and less than 15 percent in number of transactions.

Conditions should be prescribed, however, by statute or rule and implementing regulation for using any method other than competitive sealed bidding.

It is customary among state and local governments that competitive sealed bidding is mandatory when an expenditure is expected to exceed a designated dollar amount. This applies by law or policy in all but one of the states. The amount varies widely, from zero in one state to $15,000 in two others. The most common figures are $10,000 and $5,000, applicable in 7 states and 15 states respectively. Reflecting accumulative inflationary pressures, these figures have increased substantially over the past five years, and will probably continue to increase over time. Requirements for virtually all types of equipment, materials, and supplies, and for many kinds of services, can be purchased advantageously under competitive sealed bidding. For more complex items, extra care has to be given to determination of evaluation criteria, to the design of the Request for Bids, and to the nature and weight of the evaluation criteria.

The RFB contains the purchase description or specifications covering the item(s) needed, the terms and conditions of the proposed purchase, the manner in which bids are to be submitted, the criteria for evaluating the bids, and awarding a contract, and the place and time for opening the bids. The tone of the transaction and the course of any resulting contract are cast in the RFB. Sufficient time and thought should be given to the preparation of the RFB to attract competition and to reduce or avoid any problems that might be expected to arise after bids are opened. Otherwise, competition may be unduly restricted and the transaction doomed to legal or procedural difficulties.

Requirements for public notice and use of the bidders list for soliciting competition are examined in Chapter 7. An adequate period should be allowed for bidders to receive and respond to the Request, which may range from seven calendar days or some other legally prescribed minimum time, to 30 to 60 days, depending upon urgency or the complexity of the procurement. Many jurisdictions have felt it necessary to lengthen the response period because of vagaries of the postal service.

Prior to issuing the RFB, or after issuance and before opening, one or more conferences may be held with prospective bidders, if needed, and is discussed in Chapter 7. Subsequently upon receipt, bids should remain sealed and kept in a secure place intended to prevent them from being misplaced, lost, or tampered with, until the time of opening.

Control, Opening, and Tabulation of Bids

Responsibilities and procedures for the receipt and control of bids should be set forth in writing. The procedures should require that all bids be date and time stamped, particularly since bids are hand delivered and bear no postmark. Since formal bids, by rule of law, must remain sealed until the bid opening, proper identification on the outside of the bid envelope is important and should include the solicitation number, the opening date, and the bidder's name or vendor number. The use of vendor identification number facilitates maintaining records of bidders who reply and those who do not.

Some large purchasing programs delegate the receipt and control of bids to a central records or services section within purchasing, or even to an administrative unit with no buying responsibility. One or two states go so far as to require that copies of bids be sent to both the purchasing department and the state auditor. While such a requirement offers an additional check and balance, it has distinct disadvantages. A bidder could inadvertently fail to send a copy to the auditor, or for a variety of reasons the bid could arrive late at one place or the other. Such occurrences invariably cause problems, engender complaints and appeals, and can result in the disqualification of bona fide low bids which otherwise provide savings for the public.

State and local governments can seldom afford sufficient personnel to allow for the complete segregation of bid-handling duties. In most governmental units, therefore, bids are received by the purchasing unit, often by the purchasing agent who is handling the solicitation.

The sealed bid process provides for public openings which can be attended by any interested person, as well as by bidders. This openness reduces possibilities of collusion and favoritism and fosters public confidence in the purchasing system.

Though bidders and the public are invited to attend bid openings, frequently none do so. It is prudent, therefore, to require that bids be opened in the presence of one or more witnesses. The opening should consist of announcing to any interested party such information as the name of each bidder; the price, the manufacturer, and catalog number of the items offered; and the deliveries and terms of payment submitted. While the information announced will vary according to the nature of the procurement, it should be sufficient to identify the bid for the purposes of an abstract.

State and local governments use several different means for recording the bidders and their bid prices. As a general rule, bids should be tabulated when opened, but there are times when this is not practicable. For example, some bids cover hundreds of separate items, and the time

required for recording all prices on a separate tabulation sheet is prohibitive. Alternate procedures, therefore, are necessary. Some jurisdictions have tabulations compiled by a computer. Others use various duplicating techniques. In some cases, the Request for Bids is formatted so that the commodity and price sections of the bids are detachable and can be laid out for visual comparisons. In other instances, the bid sheets themselves are strung together in an overlapping fashion to show the name of the bidder, each item on the RFB, and the item price offered by each bidder. Either the original or a copy becomes a permanent reference if questions arise concerning a particular solicitation. On some types of purchases, detailed tabulations must be prepared during the course of bid evaluation.

Whatever the case, a public record should be made at the time of the opening of the information that is publicly announced, or would be announced if persons were present. Tape recording the bid opening can provide such a record. Any subsequent tabulations should be a part of the public bid file.

Public Disclosure of Bids

Records, tabulations, or abstracts made of bids at the time of bid opening should be available as public information at all times. Bid documents themselves should be made public information following award of a contract, subject to provisions for confidentiality of proprietary and similar data.

Telephone and Telegraph Bids

Many jurisdictions give consideration to bids submitted by telephone, telegram, wiregram, or facsimile when certain conditions are met. Other jurisdictions do not consider such bids.

There is no reason that law or policy must exclude such bidding if the submissions are governed by appropriate rules. Allowing the bids can provide additional competition, can compensate in some measure for faulty mail service, and can especially be helpful to small businesses which frequently have to obtain prices, delivery, and other necessary information from manufacturers, or other principals, before they can prepare and submit a bid. When telephone, facsimile, or telegraphic bids are permitted, written rules should require that they be confirmed by submission of the bid documents properly executed within 48 hours. A telegraphic or facsimile bid must be received in hard copy at the purchasing office prior to the time set for the bid opening. The rules should further require: the telegraphic or facsimile bid to refer specifically to the applicable Request for Bids; to set forth the items, quantities, prices, and deliveries offered; and to state that the bid complies with the terms and conditions of the Invitation, and is being confirmed by submission of the bid documents properly executed. Conditions governing any consideration of telephone/telegraph/facsimile bids should be part of the standard procedural conditions of the RFB.

Advancements in the fields of data processing and telecommunications will shortly offer other acceptable means of soliciting and submitting bids, including transmission via electronic terminals, with or without hard copy. Adequate protection will need to be developed to insure the integrity of an electronic bidding process, such as message scrambling/de-scrambling procedures and physical security of the devices used.

Modifying or Withdrawing Bids

The modification or withdrawal of bids should be permitted at any time prior to bid opening upon written request. After bids are opened, requests for modification or withdrawal should be subject to the rules governing mistakes in bids.

Late Bids

Attitudes and policy vary considerably among state and local governments as to whether bids received after the time of opening may be considered for award. Some jurisdictions return any late bid to the sender, unopened. Others have effective rules under which consideration of late bids is possible. Many jurisdictions operate somewhere in between these well-defined positions.

The subject rarely is addressed by statute, and it should be. It should be covered by specific rules arrived at with the assistance of appropriate legal counsel.

Without law or policy to the contrary, courts do not deny the consideration of late bids if the bidder took reasonable steps to submit the bid in due time and failure of the bid to be on hand at the time of opening was not the result of negligence or other fault of the bidder. The fault may lie entirely with handling of the bid in the purchasing office, or with the post office or other carrier, or with a government employee who gave incorrect information, or lateness may be caused by an act of God. In such cases, the courts have held consideration of a bid would not represent favoritism, collusion, or fraud in awarding a public contract, and arbitrarily denying consideration denies the public the benefit of competition submitted in good faith. However, any of the variables may give the *appearance* of impropriety and it is best to avoid the situation by prohibiting late bids by law.

Policy permitting the consideration of late bids should be clear on three points: the bid has to be dispatched or otherwise out of possession of the bidder or its agent prior to the time of opening, subsequent delay is not the fault of the bidder, and evidence of these facts is at hand and is documented as a public record.

Mistakes in Bids

Mistakes in bids, actual or alleged, are not uncommon, and can present serious problems. The essential rule is that no change or correction be permitted which would prejudice the interest of the public or would be unfair to other bidders. For this reason, remedies for mistakes in bids become less available as the procurement process moves forward.

Prior to bid opening, a bidder may correct a mistake or withdraw the bid. After bids are opened, but before award, a mistake may be corrected only if it is minor and the intent of the bid is obvious; that is, only if the bid is in substantial compliance and the correction does not improve the bidder's competition position. "Substantial compliance," the meaning of which is discussed further in Chapter 10, refers to deviations or errors that are not material and do not invalidate the legitimacy of the bid. On these grounds, a defect in form, but not substance, may be waived or a multiplication may be corrected in the extension of a price. Where a mistake or omission is not evident on the face of a bid, and the bidder points out an error with clear and objective evidence prior to award, it is in order to allow the bid to be withdrawn, but not corrected. Where bid security applies, permitting withdrawal would normally be without forfeiture of the security.

Any remedy for a mistake becomes more difficult after award of a contract. The general view of the courts is that a mistake in a bid which comes to light at this point does not relieve the contractor from performance in accordance with the contract award, unless the error is so substantial that refusal to grant relief would be unconscionable.

Mistakes in bids occur in various ways and frequently enough to raise critical questions. *Written rules and procedures are necessary to protect the public interest and the integrity of the competitive bidding process, and to maintain fairness to all bidders.* The rules and procedures should be based on the legal principle that, in public contracting, equity has precedence over securing an advantage in price or similar factors.

Public policy does not seek public gain from mistakes by bidders. To help prevent unnecessary problems, when the purchasing office sees an apparent error in a bid, good practice calls for bringing it to the attention of the bidder and resolving the matter before further consideration of the bid for award.

COMPETITIVE QUOTATIONS

Competitive quotations are a customary method for making purchases involving dollar amounts less than that for which competitive sealed bidding is required. Such competition is often called for by law, with the transaction designated as an "informal purchase," "informal bid" or a "small purchase." Our survey indicates that in 90 percent of the states, small purchases require obtaining competitive quotations.

The quotation method differs from sealed bidding in procedure but not in principle or purpose. The objective common to both methods is to obtain goods and services that are most economical for the purposes intended, with the principles of fairness and impartiality to bidders remaining the same. To the extent that time and circumstances permit, competitive quotations is the appropriate method for making emergency purchases, irrespective of the dollar amount involved.

A number of requirements associated with competitive sealed bidding need not apply to competitive quotations. Among these are public notice, the public opening of responses, strict adherence to a time of opening, and designating in the solicitation the criteria to be used in evaluating the responses.

The time and administrative costs of purchases made by means of quotations are less than by the other competitive methods. This fact, together with the procedure being less visible, occasions temptations to divide purchases into smaller amounts so they can be made under the informal procedure. Any such practice should be specifically prohibited by statute, and the central purchasing office must further guard against it by continuous surveillance of purchase requisitions and copies of purchase orders issued by using agencies.

Central purchasing offices characteristically delegate various purchasing authorities to using departments and agencies. Included in these are certain small purchases. All of the states make such delegations in amounts that vary from $35 to $5,000 but with most of them in the $500-$2,500 range. Where central purchasing establishes a definite or indefinite quantity contract for an item or type of item, however, agencies must obtain their needs under the contract in 90 percent of the states, and local quotations are not permitted. Also, jurisdictions which operate central stores or warehouse have requirements to the effect that stocks must be used rather than using agencies making individual small purchases of the same or equivalent items.

Although there is usually a general requirement for obtaining competition in making small purchases, seldom are procedures for doing so adequately spelled out. Evidence indicates purchases often are made with more concern for convenience than competition. For very small purchases, only a minimum of competitive effort can be justified, but beyond this level, reasonable and adequate competition should be mandatory. The lack of formality allowed for competitive quotations call for special care to assure adherence to sound practices. The purchase description should avoid favoring a particular product, and a representative number of prospective suppliers should be solicited even if the bidders list is rotated. To the extent practicable, at least three competent responses should be anticipated, and they should be evaluated for optimum economy. Exercise of favoritism or user preference should be prohibited under small purchase procedures as under any other procurement method. Quotations should be submitted in writing or confirmed in writing insofar as practical. If only oral quotations are obtained, they should be recorded and records of all quotations maintained for audit purposes and as a public record.

The trend to increase the amount of expenditure under which small purchases may be made gives emphasis to the need to improve competitive quotation procedures. In many instances, the perceptive purchasing agent uses the sealed bidding procedure for a requirement that under law or rule could be made as a small purchase.

MULTI-STEP SEALED BIDDING

Multi-step bidding is a more recently developed procurement method that is rapidly becoming accepted as advantageous for some types of requirements. Approximately 70 percent of the state purchasing programs use it, but its application continues to be selective and relatively infrequent. Surveys indicate that 44 percent of local governments use this method.

The procedure usually involves two steps, combining certain aspects of competitive sealed bidding and competitive negotiation. It can be effective for some of the more complex procurement transactions, such as acquiring a medical records system that includes the training of personnel. In such a procurement, different ideas and approaches for doing the work can be received and evaluated together with the relative performance capabilities of the bidders. This method can also be advantageous in the acquisition of specialized services.

Multi-step bidding uses an Invitation for Bids to which the response in the first step consists of a technical proposal stating how the task would be accomplished and the bidder's experience and resources for carrying it out. The proposal may not include prices. Prices are submitted as the second step, or, if so requested, they may be furnished with step one, but in a separate sealed envelope which remains unopened while technical proposals are evaluated. The Request for Bids may be preceded by an earlier, exploratory set in the form of a Request for Information (RFI) from potential suppliers. The RFI should indicate clearly that it does not constitute any intent for commitment on the part of the jurisdiction.

In preparing an invitation for multi-step bidding, the specifications, product description, or statement of work should be written in terms of the purpose for which the product or service is needed and the results desired, i.e., a performance specification inviting competing ideas as to how the requirement can be met most effectively and efficiently.

The technical proposals may be opened publicly, but only to disclose the names of the bidders, not any information contained in the proposals.

Evaluation of the technical proposals is the same as for competitive negotiation, except there is no discussion of price. Following evaluation, prices are invited from all bidders whose technical proposals are acceptable, or, if prices have already been submitted, the separate sealed envelopes are opened. If the negotiations of technical proposals results in alterations or other changes, bidders are allowed to submit revised prices before any prices are opened.

Negotiation regarding technical proposals is not necessary if fully acceptable proposals are received initially. The procedure then moves directly to the next step of obtaining and considering prices, with award made as under competitive sealed bidding.

COMPETITIVE NEGOTIATION

Currently, 39 states use the competitive negotiation process. State and local governments are using competitive negotiation to purchase services, especially for data processing and telecommunication needs. Competitive negotiation provides for full competition among proposers. It also allows evaluation of proposals based on other important factors besides price, e.g., experience, approach to the problem, and staffing. This method provides for negotiation with the proposer or proposers most apt to receive the award. In so doing, the purchaser can obtain the best quality services at a good price.

The principal distinction between sealed bidding and negotiation is that the bidding process requires that bids be evaluated and awards made solely on the basis of information contained in the bids at the time of opening. No substantive changes, or any changes which would affect determination of award, are permitted either in the nature of the bid or in price. Negotiation, on the other hand, allows modification and alteration of both content and price after offers are submitted and during the evaluation process.

Otherwise, many procedural characteristics of competitive bidding can apply also to competitive negotiation. For example, competitive negotiation involves public notice and the issuance of a solicitation, designated as a Request for Proposals (RFP), which establishes the time and place at which the proposals will be received. There are, however, also differences. Where Requests for Proposals are opened publicly, only the names of the proposers should be revealed; neither prices nor other information is given until after a notice of intent to award is given. In some jurisdictions, the competitive negotiation process does not require a full public opening of proposals. A decision not to have a public opening can preserve the negotiating power of the purchaser, i.e., negotiation with several proposers puts the purchaser in a better position than negotiating with a single proposer who is aware there is no competition.

As in any procurement process, a vendor may identify portions of his/her bid or proposal which are proprietary or trade secrets. Those portions so identified must be handled as confidential information by the receiving purchasing office and not be made available to the public. Release of this information potentially may affect the proposer's competitive position in the marketplace.

The RFP must include: a description of the item or service desired; the criteria, given in order of their relative importance or individually weighted, that will be used in evaluating the proposals; and a statement as to when and in what manner prices are to be submitted. Also, the RFP should provide that after proposals are opened, they may be discussed with the proposers if the purchaser deems it advantageous to do so. In this context, "discussion" means clarification, modification, and negotiation, or any of these; and if discussions are conducted, all proposers whose proposals are found to be acceptable or reasonably susceptible to being made acceptable, must be given equal opportunity to negotiate and revise their proposals. Award may be made on the basis of the proposals as initially submitted, without negotiation, but if this is not done, no information from a competing proposal may be revealed to another competitor during the course of

discussion. Law or rule should prohibit any type of auction practice or allowing the transfer of technical information, which undermines fair competition.

Prior to issuing the RFP, the evaluation factors should be developed carefully in relation to their importance to the proposed work or project. Frequently, such criteria can be divided into three main categories: technical capability and the approach for meeting performance requirements; competitiveness and reasonableness of price; and managerial capability. As in the case of competitive sealed bidding, only criteria as designated in the request for proposal can be considered in evaluation of award.

Any committee or team that may participate in the evaluation should be selected and briefed before the Request for Proposals is issued. The group should include three or more representatives of the using agency and central purchasing office. The proposal evaluation criteria should appear in the RFP and be looked upon as the standards that measure how well a proposer's approach meets desired performance requirements. Such standards should seek to match the evaluation of proposals against objective norms rather than against each other, and must be developed prior to the solicitation of proposals. Once a scoring system is devised, it must be impartially applied to each proposal.

The proposal evaluation process normally should include price/cost analysis. Price analysis represents an evaluation of proposed prices without regard to the separate cost elements and proposed amount of profit. Techniques such as comparing the prices offered with each other, with published price lists, and with independent estimates can be used. This analysis may be sufficient when there is adequate competition and prior experience with the item or service being purchased. Otherwise cost analysis is essential. Comparisons of prices submitted can range from simple to complex, depending upon the characteristics of the procurement. One method takes price as one criterion with a specific percentage weight after the final grading of the technical portion of the proposal. Price is prorated with the lowest cost proposal given the highest score for the price category. The formula is as follows:

$$\frac{\text{Lowest price proposal}}{\text{Other proposer's price (varies according to proposal being scored)}} \times \text{Maximum points given to price} = \text{Score}$$

Calculation of points awarded to other proposals will use the lowest dollar amount proposed as a constant numerator and the dollar amount of the firm being scored as the denominator. The result will always be less than one (1.0). The ratio is then multiplied by the maximum number of points given to the price section of the request for proposal. The resulting scores are then added to the technical scores and the total points for each proposal are ranked to determine the successful proposer.

Cost analysis consists of a review and verification of the cost data supporting each element of proposed cost. The cost data that will be allowed must be determined before the RFP is issued.

Negotiations should be conducted individually with each qualified proposer and should be documented by minutes of each session. The proposer may modify or withdraw his proposal at any time prior to the submission of 'best and final" offers.

Best and Final Offers

Following negotiations, a time must be set for all proposers whose proposals have been deemed acceptable to submit proposals including prices. Changes are not allowed in proposals or prices after best and final offers are received, unless there is provision in law or rules to make a finding that re-submission would be in the public interest. In lieu of furnishing a best and final offer, a proposer may choose to let stand his/her initial proposal and any price already submitted, but unopened.

Following award of a contract, explanations should be available to any unsuccessful proposer as to why his/her proposal was not accepted.

CONTRACTING FOR SERVICES

In recent years, contracting for services has become an increasingly important part of most central purchasing functions. Two-thirds of the states' central purchasing offices are involved in the acquisition of services, including professional services. The need for unifying policy and procedures in obtaining services places additional responsibilities on the central purchasing office.

With shrinking state budgets, contracting for services, once provided by government workers and contracting for new services, has become one method of reducing costs. This practice is best defined as "contracting out", but often is loosely referred to as "privatization." In contracting for services such as janitorial services, advertising services, or medical services, the governmental unit maintains responsibility for the administration of the contract and the provision of services.

As a result of these trends, central purchasing offices are faced with developing innovative methods for acquiring quality services at a reasonable price and are playing an important role in governmental cost containment initiatives.

Services can be divided broadly into two types. One relates to the kinds of proprietary services performed by an independent contractor requiring specialized knowledge, experience, expertise, or similar capabilities, wherein the service rendered does not consist primarily of acquisition of equipment or materials. In this category are pest control services, laundry services, catering services, security services, and maintenance of equipment. The other type relates primarily to the services of professionals, such as physicians, ministers, architects, dentists, engineers, accountants and consultants, scientists, and artists.

Sealed competitive bidding is usually an adequate and satisfactory method of contracting for the first type. By contrast, controversy abounds as to appropriate means and methods of contracting for personal and professional services. Some professional groups argue that their fees should be non-competitive and that price should not be

a factor in evaluating proposals for their services. The questions are widely debated, numerous attorneys general opinions have been sought, and the issues in differing contexts have been taken to the courts. Points of dispute relate variously to anti-trust matters, professional prerogatives, group ethics, artistic exceptions, and suitability of proposal evaluation criteria.

The purchasing view of contracting for personal and professional services is consistent with its overall view that, in public contracting, the public interest is paramount. Moreover, the legal trend is to disallow protections sought by professional groups that would prohibit their members from competing on the basis of price. The price or fee to be charged by prospective contractors is a valid consideration in evaluating competitive offers; for sole source procurement, a price or fee should be subject to cost and price analysis. Personal and professional services can be obtained adequately and equitably by use of one of the established procurement methods, according to the nature of circumstances surrounding the requirement: competitive sealed bidding, competitive quotations, multi-step sealed bidding, competitive negotiation, emergency purchases, and sole source procurement.

In soliciting competitive responses, the statement of work and the evaluation criteria must be set forth clearly in the solicitation document. The competitive negotiation procedure or multi-step sealed bidding will usually be the most suitable purchasing method. Evaluation of proposals should give due consideration to the professional competence of the proposers, the quality of the proposed plan or product for the purpose intended, and the overall cost of the work, including all fees and other charges. The amount of a fee should rarely not be the determining factor for award.

Pre-proposal conferences often can facilitate receiving proposals that are better prepared, more acceptable, and more competitive with respect both to work performance and overall cost.

For any type of contractual service which extends over a period of time, the solicitation document and the contract should specify monitoring points at which the progress and acceptability of the work will be evaluated and corrective measures taken as may be needed. This experience, together with an overall performance evaluation upon completion of the contract, should be made a part of the contract file.

9. Acquisition: Noncompetitive and Limited-Competition

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Require rules defining conditions under which purchases made may be made by other than competitive sealed bidding, multi-step sealed bidding, or competitive negotiation.

Provide that the chief purchasing official has final determination of waiver of competition and require that the determination be in writing.

Require negotiation on noncompetitive purchases and price or cost analyses under non-competitive negotiation, in accord with applicable rules.

Define "emergency" for purchasing purposes and require rules including written determination of circumstances and obtaining competition to the extent feasible.

Require rules governing the handling of unsolicited offers, including approval of central purchasing prior to any evaluation or acceptance of such an offer.

Require approval by central purchasing of the quality and price of items produced by one agency for sale to other agencies.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Identify circumstances permitting waiver of competition or allowing limited competition.

Vary requirements for documentation according to the nature of a waiver or the limits on competition, e.g., routine documentation for a purchase made for resale contrasted to explicit documentation for a sole-source purchase.

Set forth authorities and procedures applicable to using agencies and to central purchasing in making emergency purchases.

Establish policy for making small purchases.

Recommended Practices

Central purchasing should issue written procedures requiring its prior approval for various types of purchase involving waiver of competition or limited competition.

Small purchase procedures should be set out in reasonable detail, including soliciting competition in writing or by telephone, and the documentation required.

Purchase order forms should provide a space for reference to the basis of the order, i.e., the quotation number and date, the IFB or RFP number, the applicable term contract, etc.

Central purchasing should have a systematic way of reviewing and approving or denying the quality and price of items produced by an agency, e.g., a correctional industry, for sale to and use by other agencies.

Rotation of bidders list should be prohibited except for small purchases.

Geographic purchasing (see pages 70 and 71) should be used under those conditions which favor it.

There are circumstances which require a noncompetitive purchase, and there is a prescriptive method for accomplishing it: noncompetitive and limited-competitive purchases.

Aspects of these purchases place special burdens on the central purchasing office to establish responsibility and provide safeguards against abuse. Central purchasing should make final decisions with respect to all sole source purchases, and to other noncompetitive purchases where practical, and should have direct involvement in determining the validity of cost and pricing data.

NONCOMPETITIVE PURCHASES

Competition should be the central thrust of public contracting. However, competition is not always possible or practicable. In such cases, central purchasing must have adequate authority *under law* to proceed with, or to authorize, a purchase. Operation of government programs cannot be threatened because it is not feasible to make a purchase on a competitive basis. The proper and effective exercise of this authority necessitates rules governing the waiver of competition.

Waiver of Competition

The term "waiver," rather than "exception" or "exemption," is recommended. The latter terms are better applied to specific commodities and services than to general conditions or circumstances.

Rules or regulations should recognize the following conditions under which competitive solicitations may be waived:

- A needed product or service is available from only one supplier (sole-source).
- A particular product or service is wanted for experiment or trial.
- An emergency situation occurs that makes the normal competitive process impractical.
- Products are bought for over-the-counter resale.
- Acceptable items are produced by correctional industries or other government agencies.
- The amount of a purchase is too small to justify the expense of soliciting quotations.
- A purchase is made in response to an unsolicited offer.
- A purchase is made from, or a sale made to, another unit of government.
- The purchase of a used item is advantageous and the item is available only on short notice and subject to prior sale.

The rule or regulation should state that although there is provision for waiver, competition is required wherever practicable and, except where it applies to small purchase, the basis and reasons for each waiver shall be documented as a public record. Merely citing a condition for waiver, without supporting information and justification, is not adequate reason for documentation.

In some jurisdictions, waivers exceeding a specified dollar amount are reserved to the governor or an officer of cabinet rank in a state, the mayor, county administrator, or a commission at the local level. The better practice is to have determinations made by the central purchasing office in accord with suitable rules and regulations and supported by written reasons for each case. The request for waiver by a using agency should be accompanied by an explanation of need.

The subject of waiver points to a significant difference between state and local government purchasing and federal procurement. The latter, customarily, has allowed waiver from competitive sealed bidding, or "formal advertising," on the grounds of inability to write a technical specification which permits award primarily on the basis of acquisition price. Experience of state and local government purchasing finds no justification for such a provision, for two basic reasons: (1) a technical, or unique, specification is not necessary for the majority of needs - other types are more satisfactory - a unique specification is needed only for public works projects and other customer work; (2) several factors beyond acquisition price, such as suitability, purpose for which intended, and overall economy, should be considered in determining award under competitive sealed bidding. In addition, practice indicates the federal provision for waiver lends itself to abuse. Consequently, due to an out-moded and overly stringent view of competitive bidding, federal purchasing has found itself without an effective way of buying commercial products and resorting to obtain them noncompetitively through unlimited "multiple award schedules."

This distinction is emphasized because of long-standing lack of understanding among both federal, state, and local government officials as to certain fundamental dissimilarities in their procurement concepts and methods. The lack of understanding, especially with respect to the use and application of competitive bidding, "most-favored-customer" pricing clauses, and "multiple awards," has adversely affected communication between federal, state and local government agencies, including the administration of grant programs.

Sole Source Purchases

Sole source purchases may arise from a number of circumstances, ranging from the absolute to the feasible, practicable, or advantageous. Among them are:

- The purchase of equipment for which there is no comparable competitive product, e.g., a one-of-a-kind oscilloscope which is available only from one supplier.
- The purchase of public utility services which are natural or regulated monopolies. (Note: Some commodities in this area, such as natural gas, are now available competitively due to de-regulation.)
- The purchase of a component or replacement part for which there is no commercially available substitute, and which can be obtained only from the manufacturer.
- The purchase of an item where compatibility is the overriding consideration, such as a computer terminal for an existing system.
- The purchase of a used item, e.g., a television transmitter tower, which becomes immediately available and is subject to prior sale. Other related conditions involve the purchase of items for resale, the purchase of a particular product for trial and testing, and circumstances under which additional needs develop during the course of a project.

It is important to emphasize that sole source refers to the source, not the product or service. Thus, the ability to meet a necessary delivery date or to make on-call repairs at a particular location can create a sole-source, i.e., a single supplier, condition.

Rules and regulations must require, however, that although a certain item or service may be needed, or condition met, price competition is to be solicited if the requirement can be obtained from more than one source. Justification for a sole-source purchase depends upon a needed item being available from only a single supplier under the prevailing circumstances.

The purchasing law should require a legal notice of intent to purchase sole source over a determined dollar value.

Purchase of Government Produced Items

Requirements frequently are available from within the resources of the state or local government. Examples are:

- Items produced or manufactured as a part of correctional programs, such as farm products (eggs, canned fruits and vegetables, etc.), furniture, paints, and license tags.
- Items produced on agricultural experiment and test farms.
- Items produced in plants operated by the jurisdiction, such as sand and gravel pits, asphalt, and printing.
- Items produced as by-products of teaching and training programs.

Many states have laws which mandate the use of prison industries products by state agencies, often with the central purchasing office approving the manufacturing specifications or finished quality of the products and the prices charged. Other than such oversight responsibilities, central purchasing should be authorized to delegate, in its discretion, any authority it may have regarding the purchase of government-produced items.

Rules and regulations should stipulate that private business shall not be solicited to compete in open bidding against government-produced items. Information needed to establish or maintain fair prices for government-produced items can be obtained through informal market inquiries. Periodic analysis should be done to determine the correct "make or buy" decision for many of these internal activities as well.

Purchases from Other Governmental Units

There are occasions calling for purchases, sales, leases, and rentals between two units of government. A state highway department may rent a road grader to or from a county government. A municipality may buy computer time from a federal agency. A state university may wish to purchase a piece of research equipment from a similar university of another state.

The central purchasing authority should review and give written approval prior to any such transaction, not only as to advisability and price, but also as to terms and conditions governing the agreement.

Very Small Purchases

Some purchases are too small to justify the time and expense of soliciting competition, or sufficient information is at hand to make it unnecessary, e.g., a recent similar purchase or a well-established catalog price discount. The purchase may be so small that payment is authorized from a petty cash fund. This approach minimizes the internal expense of processing these transactions and minimizes vendor time and expense in meeting these small purchase needs.

In these instances, competition is waived solely for practical reasons. "The juice is not worth the squeezing." Limits, conditions, and procedures for purchases of this kind, however, should be set forth by the central purchasing office as a part of instructions or delegations applying to small purchases.

Unsolicited Offers

If an unsolicited offer is accepted, it constitutes a waiver of competition and, depending upon a number of factors, could be a purchase from a single available supplier, a purchase made for trial or testing, or the purchase of an item for resale.

Written rules should govern the conditions and procedures for considering, and accepting or rejecting, unsolicited offers. Generally, the rules should require that the offer be made entirely upon the initiative of the offeror; that it be submitted in sufficient detail to evaluate its need and usefulness; that it be proprietary or unique to the extent that competitive solicitations are not practicable; and that its evaluation may be subject to comparisons and tests as determined by the purchaser. In addition, procedures should require that an unsolicited offer not be evaluated, nor any commitment made by a using agency with respect to such an offer, without prior written approval of the central purchasing office.

NONCOMPETITIVE NEGOTIATION

In its broadest sense, negotiation occurs in making any purchase. Noncompetitive purchases, however, imply a need for conducting a definite form of negotiation, and with few exceptions, e.g., very small purchases, this should be required by statute and rules.

In preparing for noncompetitive negotiation, the purchaser should make a list of specific objectives relating to price, delivery, performance standards, warranty, and contractual terms and conditions. This is particularly necessary for sole source purchases where the purchaser's bargaining position is weakened by the lack of alternatives normally afforded by competition. To compensate for this absence, the purchaser needs to make the business attractive to the seller and display good faith at all times, but to rely on withholding the business, if possible, in the face of any unreasonable demands on the part of the seller. These guidelines apply whether the negotiations are conducted in person, by correspondence, or by telephone.

Whatever the manner and outcome, the negotiation should be supported by adequate documentation. Rules governing the confidentiality of data and proprietary information should be observed. This has special relevance in the consideration of unsolicited offers.

COST AND PRICE DATA

On large contracts that are negotiated without adequate price competition, and on contract modifications, the public interest calls for an examination or analysis of costs and prices to avoid excessive charges. The amount of a negotiated contract or modification above which cost or price data is required, e.g., $25,000, can be set by statute or by rule or regulation.

Cost data relates to such elements as labor, materials, and overhead. Price data has to do with prices of equipment, supplies, and services.

The purchasing statute should designate the conditions under which a contractor shall furnish cost and price data, certified as to accuracy, and provide that the purchasing office shall analyze the data to determine the reasonableness of the negotiated price. Also, the statute should require that such contracts contain a provision for price reduction based on the analysis of the data.

Analysis of cost and price data involves evaluating the various elements to prevent overcharges in connection with the basic contract, with changes that may be made in the contract, or with reimbursement of costs.

To support a need for cost and price data, the statute must give the jurisdiction authorization to audit the books and records of contractors and subcontractors.

LIMITED-COMPETITION PURCHASE

Law and implementing rules must define conditions under which purchases may be made properly without soliciting full competition. These conditions usually fall into one of three categories: emergency purchases, small purchases, and geographic purchases, with purchase actions appropriate to the circumstances dictated by both factual and practical considerations.

Emergency Purchases

Varying purchasing statutes define emergencies in different ways, some too loosely, some too stringently, and some adequately. Essentially, an emergency for purchasing purposes should be viewed as an unexpected and pressing situation requiring swift procurement action apart from regular procedures. In addition to customary references to threats to life and property, this can properly include delay in transportation or unanticipated volume of work, as some jurisdictions explicitly designate.

The purchasing statute should authorize the central purchasing office to determine when a purchasing emergency exists and to obtain needed goods or services advantageously. The determination should be made in writing and be a public record. Need is fundamental to justifying an emergency purchase. The procedure should not be allowed for satisfying preferences or convenience, for preventing funds from reverting at the end of a fiscal period, or for any reason that seeks to circumvent regular procurement methods.

Rules and regulations should cover delegation of authority by central purchasing to using agencies to make emergency purchases. Procedures should be established setting a limit, such as $1,000, below which a using agency may make an emergency purchase and report the circumstances promptly to central purchasing, and above which prior approval of central purchasing is required. The procedures should also call for written determination of the need for an emergency purchase, setting forth the basis for selection of the supplier, and limiting the quality to be purchased to that necessary to meet the emergency condition.

Rules or procedures should include a provision that if the extent time, the nature of the requirements, and other circumstances permit, competitive price quotations be sought from three or more potential sources. This is usually feasible by telephone.

Purchasing officials may, for certain commodity or service needs, want to consider issuing a solicitation in anticipation of emergency situations. An example is the provision of helicopter services for fire fighting work. A bid can be solicited with the understanding that the service will only be used in the event that the need (e.g., a fire) exists.

Small Purchases

Procedures for making small purchases should always be prescribed by policy and rule. The purchasing statute or ordinance usually establishes a figure below which a purchase is considered a small purchase. Among the states, this amount ranges from $300 to $15,000. The median figure is approximately $5,000, with two states having no designated amount.

Statutes must protect requirements for competitive sealed bidding by prohibiting any artificial dividing of amounts or quantities to allow them to be made as small purchases.

Small purchase procedures should not require soliciting full competition. They should, however, preserve the openness of the purchasing program, so any prospective bidder, who has requested to quote on a particular purchase, is invited to do so. A general rule may state that competition be obtained consistent with the size of the purchase, but for small purchases it is more useful to prescribe that, to the extent practical, a minimum of three quotations, oral or written, be requested. For example, if there are only two suppliers of a particular item, both should usually be asked to quote, regardless of the size of the purchase. The procedures should provide that the principles governing evaluation of quotations and award of contracts for small purchases follow those for competitive sealed bidding, and that public records be maintained of quotations, oral and written, and resultant awards.

Some jurisdictions rotate bidders lists for small purchases as a means of contacting a limited number of prospective suppliers and simultaneously distributing the opportunity to compete. This practice may be subject to legal challenge.

Accumulation of agency requisitions for similar items on a weekly or 10-day basis, when delivery is not critical, and the consolidation of quantities can attract more favorable prices and reduce administrative expense of handling quotations for small orders.

Geographic Purchases

Geographic purchase can be advantageous, or even necessary, for a number of reasons related to the high cost of transportation in terms of the cost of the product or to the need for local services. Examples of items which lend themselves to, or require, geographic buying are ready-mixed concrete, laundry services, sand and gravel, and pest control contracts. In addition, natural limits on the production capabilities of suppliers can make geographic or regional contracts more attractive to prospective bidders and to the purchaser. Thus, in large states, few, if any, tire recappers might be able to bid advantageously on a contract covering the state's total area and requirements.

More than half of the states maintain bidders's lists by geographic areas or, otherwise, make purchases on an area basis. States that are small in physical size tend not to do so. In making geographic purchases, solicitations are essentially limited to firms located in the area involved and to firms which serve that area. Often the bidders list maintained by central purchasing is supplemented on a particular requirement by local sources of supply suggested by the agency for whom the purchase is to be made.

While geographic purchasing is not a common practice of local units of government, the strategy should not be overlooked, particularly by larger counties and municipalities. Where service is a critical element of a contract, area segmentation may be beneficial.

Geographic and local purchases can be beneficial to small businesses, allowing them to compete when they could not do so on a statewide contract, and can be advantageous to using agencies on certain requirements where prompt, continuing services are needed. They should not be made, however, where a larger contract can satisfy requirements by more effective competition and at lower costs.

10. Acquisition: Bid Evaluation and Award

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The Purchasing Statute should:

Provide that awards under competitive sealed bids and competitive sealed proposals be made to the "responsible and responsive bidder or offeror whose bid or proposal is most economical for the purpose intended according to the criteria set forth in the solicitation."

Require that each solicitation set forth the factors to be considered in evaluating responses for award, and that no factor can be considered that is not included in the solicitation.

Require that the central purchasing authority publish rules and policies governing the evaluation-award process, including determination of responsibility and responsiveness of bidders.

Require rules that limit the use and number of multiple awards.

Recommended Regulatory Coverage

The rules or regulations to implement the statute should:

Establish policies and procedures for handling irregularities and mistakes in bids.

Define conditions and considerations under which awards may be made to more than one supplier for a similar or like item.

Require documentation to support decisions involving award to other than the apparent low price bidder, rejection of bids, or acceptance of alternate bids.

Provide that from opening, during evaluation, and until award, bid documents and related information are not public records.

Recommended Practices

All steps in the evaluation process should stress fairness and impartiality.

Seek to identify any characteristics of a product or service that can affect economy and utility for inclusion in future specifications and criteria for award.

On individual purchases, consult the using agency involved as part of the evaluation process.

Document the reason or basis for every award in a manner that is clear to a reader of the contract file.

The evaluation of bids and offers is a highly significant part of the purchasing process. It brings together the two principal aims of public contracting: economy and fairness.

The nature and importance of the evaluation procedure needs to be clearly understood by purchasers, bidders, agency program administrators, and the general public. The courts declare that the purpose of competitive bidding is the conservation of public funds, a finding that reasonably can be extended to say that the overall purpose of public contracting is to achieve economy. But the courts declare, also, that economy not withstanding favoritism, corruption, and fraud are not permissible in awarding public contracts, nor can decisions be arbitrary or capricious.

The evaluation of bids or offers for award of a contract, therefore, must be made equitably with economy as the objective. Otherwise, favoritism and waste result.

LEGAL CRITERIA FOR AWARD

Broad criteria for award should be designated in the purchasing statute or ordinance. Two of these criteria, responsiveness and responsibility, are overriding. Award cannot be made of a bid or offer that is not in keeping with the provisions of the solicitation, or to a bidder or offeror who lacks the ability to perform satisfactorily.

Other general criteria, appropriate for specifying in law, are price or cost, quality, suitability, delivery, and advantageousness. Language found most commonly among state purchasing statutes speaks of awarding contracts "to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required, and the date of delivery." A number of states incorporate these factors into an overall requirement for award to the "best bid," and some call for award of the bid that is "most advantageous" to the government.

These several considerations can be consolidated into an inclusive provision recommended as purchasing law: **"Award shall be made to the responsive and responsible bidder or offeror whose bid or proposal is most economical for the purpose intended according to criteria designated in the solicitation."**

The statute or ordinance needs to supplement this provision with three requirements: (1)that the Invitation for Bids or Request for Proposals must set forth any factors, other than initial price, that will be used in evaluating the bids or proposals; (2)that no evaluation factor may be used that is not stated in the solicitation; and (3) that if award is made for other than the low initial price, the reasons must be documented as a public record. In addition to accommodating various needs for making partial awards, progressive or incremental awards, multiple awards, and awards by line items or groups of items, as well as other legal purposes, the statute should contain a provision to the effect that singular words mean, also, the plural and plural words, the singular.

Finally, the purchasing law should ensure that a large award to a single bidder, including a jurisdiction's total requirements for a commodity or service, or award of requirements combined as cooperative purchasing, does not constitute discrimination or restraint of trade.

PURCHASING FACTORS FOR EVALUATION AND AWARD

Legal criteria establish basic policy. This policy must be implemented by purchasing criteria and specific evaluation factors.

After receipt and opening, bids and proposals must be examined for several considerations including responsiveness, competitiveness, suitability of the product or service offered, cost and economy for the taxpayer, collateral services that might be needed, ability of the bidder or offeror to perform, and so on. Specific evaluation factors can vary considerably according to the kind, nature, and intended use of the products, including products that are predominantly similar, as with automotive tires of the same size, where in one instance the chief consideration may be mileage, and in another, cornering at high speeds, or with typewriter ribbons, which for one purpose may be tested primarily for clarity and for another, length of service. Especially in the purchase of regular commercial products, suitability and economy usually are interrelated in terms of price and performance.

Responsiveness

Responsiveness and responsibility have particular legal connotations, and frequently are defined in statutes and ordinances. Responsiveness relates to compliance with the provisions of the solicitation, including specifications, and contractual terms and conditions. It relates also to fairness in that it requires the bidder or offeror to respond within certain bounds of commonalty, or in terms of certain common denominators, to provide a foundation for competition. Absolute or precise conformity, however, is not required. The rule is that conformity in material respects, i.e., substantial compliance, suffices. This protects the public from being denied bona fide competition for reasons that are inconsequential. Other aspects of responsiveness, such as "all or none" bids and "substantial compliance," are discussed in Chapters 7 and 8.

Responsibility

Responsibility relates primarily to the ability of a bidder or offeror to successfully carry out a proposed contract. In addition, it can relate to one's character, reputation, and integrity. Thus, a bidder, otherwise able to perform, who has been convicted of anti-trust violations may be found not responsible. Other considerations bearing on a determination of responsibility can be experience, past performance, business and financial capabilities, skills, technical organization, and reliability.

Some method of ascertaining responsibility, if only a simple assumption, is necessary in making any award. The alternative would be to make an award to a bidder or offeror who apparently or obviously would not be able to carry out the contract satisfactorily.

A policy of prequalifying bidders should not be a conclusive determination in awarding contracts to responsible vendors. Criteria for prequalification tend to screen out nonresponsible firms, and the application file for bidder qualification affords a source of ready information for evaluation or follow-up. Law should provide that where the purchasing office makes an inquiry regarding responsibility and the bidder or offeror fails to furnish the information in an adequate or timely manner, a finding of nonresponsiblity may be rendered. A determination of nonresponsibility should be made in writing as a public record when a bidder or offeror otherwise would have received an award.

Responsibility is discussed also under Chapter 7.

Price as the Primary Factor

Price is usually synonymous with an acquisition figure, i.e., the initial outlay of money necessary to buy something. Unfortunately, the proper role of price in determining the award of a contract often is not understood.

Lowest initial price does not necessarily equate with economy, or represent the most economical purchase. Where it does, and the bidder is responsive and responsible, it should determine the successful bidder. But when it does not, award on the basis of initial price is imprudent or wasteful.

Initial price should always be a factor in evaluating an award, either as the basic determinant or as an element of overall cost. The correct role of price in the evaluation process is related directly to the kind of specification used and the ability of the purchaser to identify and to designate in the solicitation other relevant factors that will be considered in the evaluation. Initial price is most

likely to represent ultimate economy under two conditions: (1) when the specifications call for a product or service produced and delivered to the purchaser's precise design, as in the case of a construction item, or custom-tailored uniforms; and (2) when the specifications are for an item that is standard to the extent that differences in quality and performance for the intended use are negligible, as with many building materials and inspection-graded foodstuffs. *The Report of the Commission on Government Procurement* explains that initial price is the proper determinant for award when the products or services offered, and to be furnished, are **essentially identical**, irrespective of which bidder or offeror receives the award.

Historically, therefore, laws have required award on construction and public works contracts to be made to the responsible and responsive bidder who submits the lowest price. Such bids are based on work that will be essentially identical, in accordance with the owner's specific plans. This is consistent with the precept that where specifications are written to result in bids on items that are not appreciably different in quality or performance for the intended use, initial price provides an objective means for achieving economy and for determining award among capable competitors. On the other hand, where bids are submitted on items that differ in quality or performance, further evaluation is needed.

Performance Factors: Price/Performance Evaluation

Equipment and supplies that are produced to the designs of the respective manufacturers are subject to differences in quality, in performance, and in suitability for different purposes. These differences often affect overall cost and economy, and where this is the case, initial price is not an adequate criterion for award.

State and local governments customarily buy equipment and supplies in the form of commercial products designed by the sellers; rarely do they specify unique or custom-made items. In response to the question, "Do almost all of your purchases consist of commercially available items that also are sold to other customers and the public at large?" all states answered yes.

The long-standing practice of buying commercial products, which, by nature, differ in their performance characteristics, is recognized in many purchasing statutes and ordinances by provisions which call for the consideration of quality and suitability, in addition to price, in determining award under competitive sealed bidding. Where overall economy is understood as the objective, this has led in recent years to a concept of "performance purchasing," and where sufficient data can be assembled, to the development of award formulas based on "life-cycle costing." A similar idea that gained popularity in the 1960s was called "total cost bidding," and by 1967, some 200 state and local jurisdictions in the United States and Canada were using this approach in buying various types of construction equipment.

Competitive sealed bidding that provides for the evaluation of product differences is in sharp contrast to the traditional federal position whose formal advertising procedure is to obtain "minimum essential need at lowest initial price," and to rule out consideration of differences in the design and quality of products.

Performance purchasing implies the use of functional or performance specifications. This implication is correct, but the idea has a deeper base in philosophy and attitude. Primary is recognition that the substantive thrust of functional or performance specifications and performance evaluation factors is to achieve overall economy and utility. More value for the tax dollar is a long established aim of state and local professional purchasing associations.

Seeking optimal value often requires going beyond consideration of product similarities and minimum acceptability, to the point of identifying and analyzing differences which affect performance and cost. Under competitive sealed bidding, this is done on the basis of specifications and technical data submitted with the bid, without trade-offs or negotiation with the bidders. For example, in the purchase of electrical distribution transformers, bids usually are received on units of several well-established manufacturers that are used successfully in industrial applications and by electric power companies. The units are basically similar, meet typical specifications, and are acceptable. But performance purchasing would look farther than this, and in seeking to ascertain whether there are characteristics that could result in greater economy, would find the units differ in efficiency of operation. This factor then can be included as one of the evaluation criteria in the Invitation for Bids, the efficiency of each brand can be determined from technical data required to be submitted as a part of the bid, and a more accurate comparison and overall assessment, including acquisition price, can be made to arrive at the most economical purchase. In developing and applying price/performance evaluations, central purchasing should use outside expert knowledge as may be needed to make proper technical determinations.

The same principle and approach can apply whether buying ballpoint pens, where comparative length of writing should be a major evaluation factor, to bulldozers, where differences in costs of operation, maintenance, and downtime are significant considerations. The method can be used effectively in other ways and in varying degrees. In the case of a Qualified Products List (QPL) specification, one state uses a combination of design and performance factors to establish a level of acceptability for paint brushes. The brushes of different manufacturers vary in construction and other characteristics, and point values can be assigned to these different factors to obtain comparative overall ratings. If the score for acceptability is 60, and the maximum possible score is 100, bids are solicited on all brands with a score between 60 and 100. The bids submitted are evaluated by equating point ratings to the bid prices to arrive at a performance/price relationship for each brand offered, from which comparative optimum values can be determined for different items and uses, and the contract awarded accordingly.

Performance purchasing, therefore, not only seeks greater economy and better value, it has the distinct virtue of providing incentive for manufacturers and bidders to improve quality and service. To the extent either or both of these are factors in the evaluation process, a bidder can enhance his competitive position by improving his product, or by lowering his price, or by a combination of the two. This contrasts with incentive for bidders to reduce quality to the lowest acceptable level under the "minimum acceptability low price" philosophy of evaluation and award.

Life Cycle Costing

Life cycle costing (LCC) gained much attention through the 1970s. It is a method for considering bids and offers which uses price/performance evaluations to their fullest extent. Unfortunately, true life cycle costing usually requires a series of demonstrable factors and figures to be used as cost elements, sufficient to construct a total cost formula, that rarely are available. As a result, many purchases are made under an LCC misnomer, represented as life cycle costing, when, in fact, they are not. While projections, if logically arrived at, are permissible under LCC, the purchasing office should be aware of legal implications of a deficient life cycle costing formula when assumptions or approximations are used instead of reliable data. The overall purpose and intent of LCC applications are to be encouraged, however, even while a more accurate understanding of the term is needed generally.

Classic examples of life cycle costing can be found in formulas developed for the evaluation of bids on window air conditioners and water heaters. Where these are used, low initial price may not represent the best bid, as often is the case when price/performance criteria are applied.

Evaluation for Energy Efficiency

Increased costs of energy in all forms and the need for energy conservation have spurred efforts to purchase products that reduce costs by operating more energy efficiently. In public contracting, this necessitates the use of price/performance evaluations. The values can be appliances, and many kinds of industrial equipment, including air compressors and fork lift trucks. The air conditioner and water heater examples already cited are well known applications. It should be emphasized that a life cycle costing formula is not necessary for energy-efficient purchases. Award can be determined by an evaluation consisting only of acquisition price plus the cost of energy consumed over a projected period of use, calculated for each competing product.

In addition to reducing costs for the professional purchaser, these evaluations have long-range benefits in stimulating manufacturers to design and market improved products which afford greater economy and utility for the retail buyer.

Evaluation for Other Advantages

Price/performance evaluations can provide for economic consideration of any desired characteristic of a product. An example is the successful effort spearheaded by the National Institute of Governmental Purchasing directed to the purchase of products with lower noise levels. The "Buy Quiet" program has been a cooperative endeavor on the part of local, state, and federal groups to buy quiet models of various kinds of equipment, such as grass mowers, trucks, pneumatic drills, chain saws, trash compactors, and typewriters. Evaluation factors and procedures applicable to the different type of equipment are developed for use by public purchasing. The result is a quieter environment and, again, the method of determining award provides that a manufacturer enhance his competitive chances by improving, not reducing, product performance.

Timeliness of Evaluation

It is incumbent upon the central purchasing process to evaluate bids and offers and make awards expeditiously. Unnecessary delays discourage competition and adversely affect the program of using agencies. Price/performance evaluations usually require more effort and time than ascertaining the low initial price bidder, but the difference need not be significant. The process becomes simpler and more routine with experience.

Specifications and Performance Evaluation

Performance, or functional, specifications are discussed in Chapter 6, with emphasis on the change from traditional specifications that spell out how something is to be made, or done, to designating what it must do. The shift in focus invites competition not only on similarities and equivalences, but also on differences and superiorities. The evaluation of differences is the key to overall cost-effectiveness.

There is a close relationship between the type of specification used for a purchase and the factors evaluating competitive responses for award. The performance purchasing approach combines performance specification factors and price/performance criteria into evaluations, under competitive sealed bidding or competitive negotiation, to achieve greater utility and economy. Minimum acceptability and initial price are components in the evaluation process, but they are relative to overall consideration. The approach has sound precedent and room for substantial growth. For many years coal, mined and sold by the ton, has been bought by large users not according to price per ton, but on the basis of cost per million BTUs. This results-oriented view is now being applied by buying air conditioners in terms of BTU cost, water coolers and water heaters on the basis of cost per gallon of cooled or heated water, vehicle tires on the basis of cost per mile, copying machines on the basis of cost per copy, and so on. The technique can expand in many directions: buying light bulbs and tubes in terms of cost of watt/lumen hours, cleaners in terms of cleanability, outdoor flags according to durability, cocoa mats according to wearability, vehicle batteries on the basis of cost per start; and filing equipment by cost per record or filing inch.

Evaluation of Discounts

When not calculated by bidders into their net bid prices, discounts are usually offered as percentages in any of three forms: a percentage to be deducted from an established price list, a percentage to be deducted for prompt payment of an invoice, a percentage to be deducted after having reached a certain volume of ordering. The first two are common practices; the third is unusual.

A discount from a published price is referred to as a "trade discount" and is frequently requested in the Invitation for Bids as the mechanism for pricing the resulting contract. The published prices from which the discount is to apply may be a retail price list, a wholesaler's or jobber's price schedule, or a government price schedule. If the discount to be offered is in a chain form, such as 50-10-5 percent, i.e., a sequential discount that offers an initial reduction from list price (50% in this example), another discount from the initially reduced price (10% in this example), and additional discount(s) from the previously reduced price (5% in this example), the RFB should instruct the bidder to state it as a single figure, 55.25 percent. Except in cases where the discounts offered by bidders are offered against the same price schedule, or against schedules which carry identical prices (e.g., window glass or galvanized washers), award should never be based on the size of the discount alone. Low bidders should be determined by comparison of net prices after discounts are applied. This rule is observed by most state purchasing programs, with over 75 percent of them reporting they rarely or never award contracts on the basis of discount without consideration of net price.

A discount offered for prompt payment is often called a "cash" discount, is usually 1 percent or 2 percent, and typically calls for payment within 10 to 20 days. Many jurisdictions do not consider these discounts in comparing or computing bid prices. Others do not process invoices rapidly enough to be entitled to cash discounts, which, therefore, should not be used in deciding the successful bidder unless steps are taken to assure that the invoices will be paid within the time allowed for the discount.

The following language, as a part of the Request for Bids, can be useful with respect to cash discounts: "Bidders are urged to compute discounts for prompt payment into the bid price(s), with terms of payment to be Net, 30 days. Such bids may receive preference. If a cash discount is offered and accepted, it will be considered earned if paid within 30 days after receipt of correct invoice or acceptance of goods, whichever is later."

A discount to be earned by ordering a certain quantity or dollar volume under an indefinite quantity contract is seldom called for in a Request for Bids. The purchaser intends that the nature and provisions of a proposed contract elicit the most favorable prices bidders can offer without the addition of qualifying conditions. Occasionally, however, a bidder offers such a discount gratuitously, usually in a graduated range such as 4 to 8 percent applicable to orders placed against the contract after purchases have reached, say, $100,000. Such propositions do not lend themselves to equitable competitive evaluation and should not be used to determine a low or successful bidder. If award is otherwise made to a firm that has included an offer of this kind, however, the purchaser should take such advantage of it as circumstances subsequently allow.

MULTIPLE SOURCE EVALUATIONS

There are conditions under which it is either necessary or advantageous to award a contract to more than one supplier for the same item on a solicitation, or for similar items. In the case of definite quantity contracts, this is called a progressive, or incremental, award. For indefinite quantity contracts, it is referred to as a multiple award.

A progressive award is in order when two or more suppliers are necessary to furnish the quantity specified in the solicitation or to meet the delivery requirements. If either circumstance can be anticipated before seeking competition, the solicitation document should be designed to provide for separate-item bids on less than the full quantity or the total delivery. Evaluation and award should be made by accepting prices and deliveries beginning with the most economical and progressing to higher offers until the full requirements are committed at the lowest overall cost available.

A multiple award is the award of a contract to two or more suppliers for furnishing an indefinite quantity of a like item or category of items, where more than one supplier is needed to meet the contract requirements for quantity, delivery, service, or product compatibility. An example of a multiple award in state purchasing would be award of an annual statewide term contract to the two lowest and best bidders for furnishing ready-mixed paints, because a single supplier could not adequately provide the necessary day-to-day deliveries and technical services to a large number of widely dispersed using agencies and locations.

It is important to understand that making multiple awards can evade central purchasing responsibilities for making buying decisions between and among products and vendors. Multiple awards transfer these decisions in large part or in whole to the program agencies, where they are likely to be made with less impartiality and purchasing proficiency. Written policy and rules are necessary to guard against laxness and abuses in connection with multiple awards. **The policy and rules should provide: that although the occasional need for multiple award is recognized, extreme care must be exercised to protect the character and principles of competitive bidding, and the multiple awards shall not be made when a single award can serve the contract requirements, that the number of suppliers included under a multiple award shall be limited to the minimum number necessary to reasonably satisfy the needs of the contract, and that such awards shall not be made for the purpose of dividing the business, providing a selection of products or suppliers to satisfy using agency preferences as contrasted with needs, or avoiding the resolution of the bids.** The policy and rules should also require (a) that any multiple award be made under

the competitive sealed bidding procedure, but if competitive bidding is not practicable, competitive quotations or competitive negotiation must be used; and (b) that all eligible users of the contract be named in the solicitation with the understanding it is mandatory that their needs will be obtained from the successful bidders under the terms and conditions of the contract.

State purchasing programs on the whole make relatively little use of multiple awards. There is usually no clear authorization in statute or rules and regulations for such awards, and they generally result in higher prices than bids submitted under either definite quantity or single award indefinite quantity contracts unless astute efforts are made to promote competitiveness. State and local governments are finding that better identification of agency needs and usage of an item resolves a problem which frequently causes using agencies to favor multiple awards under term contracts. Where there is a demonstrated need for different capabilities and levels of performance, e.g., as in copying machines, these can be specified as separate items on the Invitation for Bids. Each item can then be awarded to a single supplier in a manner to provide using agencies an appropriate range of selectivity to meet different needs and applications.

By formal resolution, the National Association of State Purchasing Officials has expressed its support of the principle of utilizing multiple award type contracts only when a single award will not suffice.

OTHER CONSIDERATIONS IN EVALUATION

After opening, many central purchasing departments refer bids to the using agency for which the purchase is being made for its review and recommendations. Any such recommendations are not binding, but can assist central purchasing in making the correct award. There are known instances, however, where bidders have participated in the evaluation process, to the extent of preparing, or otherwise substantially influencing, recommendations for award. Any and all such involvement should be prohibited, and the most effective safeguards are: (1) a provision in the purchasing statute that bids shall be publicly opened and a tabulation or similar record made publicly available at that time, with the bids themselves open to public inspection **only after award**, (2) an implementing rule or regulation to the effect that during the period of evaluation, processing of bids and accompanying information is limited to personnel of the central purchasing office, and the using agency who are responsible for participating in the evaluation, and vendor participation in, or furnishing information to vendors on the status of the bid evaluation, is not permitted.

Any listing of questions, problems, obstacles, difficulties, contentions, and other considerations that are encountered in the evaluation and award of bids and offers would be incomplete. A mark of professional purchasing is the ability and presence of mind to foresee many of these, then to eliminate or reduce their impact by skillful design and preparation of the solicitation document.

Additional coverage or discussion of circumstances that affect evaluation can be found in the following chapters:

"All or None" Bids ..... Chapter 7
Alternate Bids ..... Chapter 7
Confidentiality of Information .. Chapter 7
Late Bids ..... Chapter 8
Mistakes in Bids ..... Chapter 8
One or No Bids Received ..... Chapter 7
Optional Items ..... Chapter 6
Public Disclosure of Bids ..... Chapter 8
Rejection of Bids ..... Chapter 7
Residential Preferences ..... Chapter 8
Substantial Compliance ..... Chapter 8
Telephone and Telegraph Bids .. Chapter 8

DOCUMENTATION

The importance of adequate documentation of the reasons for determining the successful bidder can scarcely be overstated. The evaluation process, by nature, is inclined to unexplained assumptions by purchasers and misunderstandings on the part of bidders and the public. Protests on matters, ranging from determinations of responsiveness and responsibility to methods of testing products to the application of evaluation factors, should be anticipated. Reasonable documentation, if only a brief notation, concerning any action likely to need an explanation is the best defense.

After award, the bid file should contain a record sufficient for a reader (perhaps some considerable time later) to follow the course of the transaction especially as to the method of evaluation and basis of award. The latter can range from a simple indication that award was made to the low price bidder to a listing of the completed life cycle cost calculations made of all the bids received. In preparing documentation, the purchasing officer should be aware of yet another of the laws of contrariety: if something can be misinterpreted, it likely will be.

11. Quality Assurance: Inspection and Testing

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Require that central purchasing establish and administer a formal inspection and testing program.
Authorize the state or local government to inspect the plant of a contractor or prospective contractor.
Provide that central purchasing may use laboratories and testing facilities of any other department, institution, or agency of the jurisdiction, and may contract for testing services with outside sources.

Recommended Regulatory Coverage

The rules or regulations to implement the statute should:

Designate actions that may be taken when contractors fail to perform satisfactorily.
Provide that central purchasing may prescribe procedures for the testing or trial by a using agency of any equipment, materials, or supplies.
Establish standards for the conduct of inspections in the plant or place of business of a contractor or prospective contractor.
Develop criteria for the format and substance of complaint files, including a formal, written reporting system for deficiencies noted during inspections.

Recommended Practices

Central purchasing should prepare and publish an inspection manual which sets forth the authorities, responsibilities, techniques, and standards related to the inspection and testing program. Alternatively, this material can be included in the purchasing procedures manual.
Government personnel who are responsible for receiving and inspecting items should have ready access to the applicable specifications prior to delivery. Central purchasing should train or oversee training of receiving personnel.
Central purchasing should give prior approval, with instructions or provisions for monitoring, to any trial or testing of products by using agencies.
Central purchasing should write guidelines on the types of testing facilities that are available and on the use of other quality assurance techniques, such as obtaining certificates of compliance or certified test results to accompany deliveries.
There is a need to explore ways in which several or many jurisdictions can coordinate the testing of similar items and exchange test information.
There should be a formal, written, reporting system for complaints against vendors and for deficiencies noted during inspections. The using agency must be accountable for reporting.
Central purchasing should be responsible for acting on deficiency and complaint reports and should be the contact with suppliers regarding such deficiencies.
There should be written policy dealing with product warranties and the handling of latent defects.
Inspection reports should be tied to payment procedures so that payments can be withheld until any problems are resolved satisfactorily.

This chapter is concerned with the inspection, testing, and acceptance of equipment, materials, supplies, and related services, but not of construction.

Inspection of construction work involves unique activities to the extent of employing licensed professionals either on staff or by contract. It demands compliance with building codes and similar legal mandates as well as, or in addition to, compliance with the purchaser's specifications. Inspection, tests, and acceptance of construction and public works projects, therefore, warrant special attention and treatment apart from the purchase of commodities and services.

This chapter, also, does not address the administration of contract professional services, although requirements for contract performance are as critical for these procurements as is the inspection and testing of equipment, materials, and supplies. Monitoring the performance of professional services is referred to in Chapter 8.

A notable deficiency in many public purchasing systems is the absence or inadequacy of a centrally administered inspection program for commodities. This condition exists even in programs that may be innovative in other respects, as in automation of data, or in advanced specification writing. There is often a feeling that a formal inspection program is not necessary, with three explanations usually given for this view. One is that suppliers seldom, purposefully or otherwise, make nonconforming deliveries, and the few instances that do occur do not justify the effort needed to detect them. Second, that receiving agencies handle inspections adequately without

participation on the part of central purchasing. Third, that deliveries are satisfactory and conform to specifications; otherwise central purchasing would receive many complaints.

A closer look, however, indicates that these suppositions lack validity. State and local governments with centrally controlled inspection programs invariably have uncovered large numbers of nonconforming deliveries at the inception of the programs, for example, three-gallon containers furnished in lieu of five-gallon containers specified, improper components in equipment, diluted chemical compounds, instrumentation not properly calibrated, and equipment being dropped off when the contract calls for installation. The incidence of nonconformance is substantial enough to disprove a sweeping assumption that suppliers can be expected to comply with specifications.

Experience shows, also, that while some using agencies take great care in inspecting delivered goods, the majority tend to accept the premise that items delivered will comply with the specifications. This occurs most frequently where central oversight is lacking. Even when receiving personnel attempt to inspect deliveries, all they can reasonably do is make a visual examination for damage if they have no training or no guidelines to follow and no copy of the applicable purchase specifications. Without a formal program, there appears to be little assurance that inspections are made at all, or if made, that they are thorough. In addition, a system that lacks formality and direction is susceptible to collusion between the shipper and receiver.

A lack of complaints from using agencies is not to be construed as evidence that a formal program is not needed. Many types of nonconforming deliveries can be discovered only by proper inspection. If a receiving clerk routinely signs a delivery ticket for 20 five-gallon containers of an item when actually 20 three-gallon containers were delivered, payment likely will be made for five-gallon units and the ultimate user may never realize an incorrect quantity was received. Where quality is reduced even slightly, the gain to a supplier can by substantial, and the shortcoming may never be obvious to the user. A nonconforming item may cause a problem only infrequently, as when it is operating under stress (e.g., a trash bag thinner than specified). Similarly, a minor change in the performance of an item may not be readily noticeable (e.g., diluted floor wax). A problem that occurs after a lapse of time following receipt of an item may not be attributed to original inferior quality. Absence of complaints, therefore, can in fact signify poor or nonexistent inspections. Some using agencies indicate they do not file complaints with central purchasing because little or no action is taken on them. Although this generally may not be the case, such an attitude further supports the need for the central activity to have a well-defined procedure not only for the submission of complaints, but for acting on them and providing appropriate notifications to the using agencies.

Governments without central inspection programs fail to heed a basic rule of the marketplace: "let the buyer beware." This caveat came about not only because of inadvertent mistakes, but because of unscrupulous suppliers who will use system weakness to their advantage. Where inspection is inadequate, opportunities for fraud on the part of an unprincipled supplier are obvious. He can offer one thing and ship another, or he can compute his bid on an item of lower quality than that specified, underbid his competitors, and probably receive the award if there is no indication he is not a responsible bidder. Jurisdictions which have instituted central inspection programs have found these practices occur often, with the number of nonconforming deliveries discovered when the program was undertaken decreasing sharply and remaining at a low level once the program became fully operational.

Experience, also, argues that in order for a government to be wary in the marketplace, the task must be recognized as a specialized responsibility. When the inspection process is centrally managed and controlled, with uniform rules and procedures, many problems can be overcome. Precautions can be taken to ensure that deliveries are properly inspected, with receiving personnel given guidelines and information necessary to make inspections competently. A formal system should show evidence of continuing concern for assuring the correctness of goods received, and using agencies will be encouraged to submit complaints. Requiring adequate receiving records, and periodic checks by central office inspection personnel, auditors, or other government authorities, reduces the possibility of collusion between suppliers and receiving personnel. The checks and controls of a formal system can form a built-in means for disciplining careless suppliers and thwarting those who attempt to defraud the public.

PLACEMENT IN CENTRAL PURCHASING

Authority over a central inspection program logically falls within the responsibilities of central purchasing. This appears to be implicit in most purchasing statutes, though often not spelled out. The requirements for open competition, properly drawn specifications, and the various safeguards connected with the central purchasing program are meant to ensure that tax dollars are spent honestly and prudently. The public purchasing system, which has the duty to see that awards are made to suppliers who are capable of providing the items specified, is incomplete if it does not take measures to see that the items delivered conform to the purchase specifications. Therefore, the central purchasing office should exercise an overall authority for determining that items contracted for comply with applicable specifications and requirements. This authority should include: responsibility for establishing testing facilities, for utilizing such facilities already available in the government, for obtaining test and inspection from outside sources where deemed advantageous, and for delegating various aspects of the function to using agencies. **If there is silence or ambiguity in the purchasing statute or ordinance as to whether central purchasing has such authority, specific authorization should be added to the statute.**

The need for central supervision of inspection and testing is reinforced by the principle that the chief purchasing official is, or should be, the contract administrator. This duty invests in the office a direct interest to see that inspecions are performed promptly and well. If there is an unreasonable amount of time between delivery and inspection, the delay may have nullified the government's right to demand that unsatisfactory performance be corrected. Not making an inspection promptly also may cause difficulties in establishing a successful claim against a supplier when problems are finally detected. For example, if an item is already in use when an inspection is made, and the item is found to be damaged, it may not be possible to prove the damage did not occur during use. Once placed in inventory, items frequently are intermixed with others, making it impossible to identify which supplier furnished the faulty items. To carry out contract administration responsibilities, the purchasing official must make certain that inspections are timely and in accordance with established policies and procedures.

TRIAL AND TESTING OF PRODUCTS

There is an aspect of testing that can be the source of many purchasing problems and disputes with vendors, but is rarely addressed in rules or written procedures. This has to do with uncontrolled or indiscriminate trial and testing of products by using agencies. Frequently, it is brought about as a sales stratagem initiated by a would-be supplier. Even when an agency is earnestly seeking something to meet a need, seldom is the trial or testing conducted in a manner that properly takes potentially competitive products into account. The result tends to be a biased appraisal, promotes resistance to competition on the part of the using personnel, and often causes vendors or prospective vendors to be misled.

Policy in this area, therefore, should stipulate that the central purchasing office prescribe procedures covering the trial use or testing of products by using agencies, including the use of any resulting information in the preparation of specifications and invitations for bids or proposals. Prior to such a trial, central purchasing then can define its scope, the test procedures, and the report format. Where indicated and feasible, the central purchasing office should be prepared to make on-site observations of the test.

PLACE OF INSPECTION

While the inspection of most purchased goods takes place at the point of delivery, which is usually the using agency, there are occasions when it is made at the manufacturer's plant or at some other location which either the purchaser or seller may designate. A pilot model of a school bus may be inspected at the site of manufacture prior to authorization to proceed with production; tire recapping may be inspected at the recapper's shop; a gantry crane may be inspected in various stages of construction at the assembly yard; and so on. Many states require the test driving of police vehicles over obstacle courses prior to award of a contract.

Also, there are circumstances which call for inspection of a bidder's production and quality control facilities to ascertain capability to perform satisfactorily if awarded a pending or future contract.

The need for conducting such inspections and tests calls for statutory authorization to inspect plants and products before, during, and after manufacture, together with adequate rules and procedures governing the manner, locations, and times in which these types of inspections may be made.

INSPECTION MANUAL

Perhaps the best way of making certain that adequate inspections will be conducted is to set forth procedures, techniques, and standards in a separate inspection manual, or as part of the purchasing procedures manual. These instructions should specify authorities, responsibilities, and inspection methods. At present, relatively few state and local governments have inspection manuals, and most state programs devote only a few sentences to inspection in their purchasing manuals.

Because basic requirements of good inspection often are neglected, the manuals need to emphasize even the obvious procedures, such as checking for late deliveries, damaged goods, and discrepancies that can be detected with the five senses. The manuals also should discuss inspection techniques that are most practical and useful, equipment that should be used, facilities available for tests that cannot be performed at the using agency location, and procedures to be followed when nonconforming deliveries are detected. Receiving personnel should have ready access to the specifications of items they inspect.

Receiving documents usually show the quantities to be delivered so that receiving personnel can check the deliveries against these quantities. An opposite method of checking is to exclude the quantities from receiving documents and require receiving personnel to count the items and record their tallies on the receiving report. An independent party then compares the quantity delivered with the quantity ordered prior to payment for the goods.

Warranties

The warranty is an aspect of quality assurance that customarily is given too little attention. Purchasers are inclined to call for or accept "the manufacturer's standard warranty" without examining its conditions and provisions. Warranties on similar products can vary substantially from different manufacturers and should be treated as a competitive element in the evaluation of bids and offers, unless the purchase description establishes a uniform warranty.

One aspect of warranties currently calls for especially close attention. Product liability is a matter of increasing complexity and concern. Court judgments running into

millions of dollars are making sellers wary with respect to assurances and guarantees regarding their products. Proposed legislation to deal with this problem is being sought by both federal and state governments, but just how it can be mitigated or resolved is not now clear. Meanwhile, it is important that the purchasing office endeavor to establish commonality that facilitates competitive bids and proposals being submitted on the basis of comparable terms and conditions.

Warranties are intended to protect the purchaser against poor workmanship and defects. They can be implied or expressly written. The Uniform Commercial Code provides that a product carries an implied warranty to the effect it will be useful for the purpose suggested by the seller. Alone, this affords minimum, and meager, protection, especially for the professional buyer. It is, therefore, frequently supplemented by manufacturers' written guarantees, which need scrutiny and comparison. Central purchasing should have a policy covering the analysis and treatment of warranties, including the handling of latent defects.

STAFFING AND TESTING FACILITIES

More than one half of the states and some local governments have, as a part of the central purchasing program, some inspection capability for assisting or supplementing inspection of products delivered to using agencies. As a practical matter, all central activities delegate some inspection to using agencies. The more effective programs employ several central purchasing personnel, often as part of the specifications/standards section, who perform inspections of specialized items and major purchases, and who also make spot checks. In addition, central purchasing should conduct periodic training classes to improve the quality of inspections. The classes should include simulated practical situations and problems, proven procedures for handling them, and new developments in inspection techniques.

Some inspections and tests can be performed only with special equipment or by technical laboratories. At present, approximately 70 percent of the states have testing resources which can be used for checking on the compliance of products received as well as in the work of developing specifications, testing items for which approved products lists are being developed, and evaluating samples.

The need for tests and testing occurs for different reasons and at different times throughout the procurement cycle. Products bought on the basis of qualified products lists, as may apply to such items as video tapes and carpets, go through certain tests for approval or rejection prior to issuance of the Request for Bids. Tests also can be used in numerous other ways in the development of specifications or purchase descriptions before competitive solicitations are prepared. Following the opening of bids, tests may be made of bidders' samples to determine whether specifications are met, or to evaluate the comparative performance capabilities of competing products. Thus, one state, in testing the writing length of bid samples of ball point pens, has found substantial differences between various brands with results ranging from 3,000 to 12,000 feet of written line. Following the award of a contract, tests may need to be conducted on a pilot model or prototype, or in other instances, may be called for during production as a measure of quality control. Upon delivery, testing may be necessary to ascertain compliance with specifications. Finally, tests conducted after an item has been placed in service can be helpful in solving problems associated with complaints by using agencies about the product or its performance.

An effective testing program does not require that central purchasing have in-house or stand-alone testing facilities. Combinations or alternatives can be more cost-effective in light of the variety and increasing technical complexity of test requirements. Successful programs have been built around cooperative arrangements between purchasing and other agencies in the government which already staff and maintain testing capabilities, such as colleges and universities and departments of agriculture and transportation. For some food items, the services of the U.S. Department of Agriculture are available through agents who grade products at the processing site to ensure they meet established standards. Bidders can be required to submit samples of randomly chosen items off the shelf or off the assembly line and have them tested by various national organizations as a condition of their bids being considered. In other cases, suppliers can be required to submit certificates of compliance or certified test results with each shipment. And private laboratories may be employed advantageously, particularly in specialized areas such as the testing of coal.

Since most governments buy many items that are the same or functionally similar, coordinated testing programs can be feasible. By combining resources in a joint effort, many governmental units that cannot afford testing facilities on their own can participate in a joint testing program. On a broader scope, nationwide programs for collecting and disseminating test data would not only assist smaller governments, but also eliminate much duplication where numerous governments perform the same or similar tests individually. In addition to reducing duplication of effort and expense, more uniform standards could be developed, as discussed in Chapter 6, "Specifications," and more consistent testing procedures adopted. With this kind of coordination, it might even be possible to designate on-site inspectors at manufacturers' facilities to make sure that shipments to client governments meet prescribed requirements.

ORGANIZATION

Since inspection and testing are so closely allied with specifications and standards activities, the work can be performed logically and well in conjunction with these functions. The position is sometimes taken that it is best

to conduct testing and inspection operationally separate from both the purchasing agents and standards staffs, in order to provide a check in the system and guard against favoritism toward a particular item or supplier. This degree of severance is not, however, necessary and, in practical terms, could apply only where the inspection and testing activities require a complement of personnel large enough to justify a separate administrative unit.

Although there must be formality in the process, the inspection staff needs sufficient latitude in scheduling to conduct some spot inspections and, otherwise, to vary normal routines. Copies of award documents should be sent to the inspection staff so they can plan their work efficiently. Management should ensure that inspections are carried out in accordance with established policies. The inspection staff should seek to respond promptly to complaints and requests for inspections by using agencies. Special areas of coverage arise through inspection staff experience and through communications with purchasing agents. Items that affect the safety of citizens and wards of the government, items that have caused problems in the past, items on which future problems can be anticipated, and new products should be given particular attention.

Timeliness

Good organization and procedure emphasize timeliness in the inspection and acceptance of merchandise and in the processing of receiving reports. This calls for planned coordination between inspectors, the purchasing office, and the accounts payable or disbursing function. Unnecessary paperwork and red tape should be eliminated. Prompt payment of invoices improves both competition and cooperation on the part of vendors, especially during times of high interest rates. Specific procedures are usually needed to expedite the acceptance of merchandise and the processing of invoices when a discount can be earned for early payment.

INSPECTION AND COMPLAINT RECORDS

Instances of nonconformance with specifications, noncompliance with contractual terms and conditions, or other types of complaints concerning suppliers' performance should be recorded and referred to central purchasing. Most states and many local governments use a special document or a "Complaint to Vendor" form for this purpose; some use a detailed "Product Information Report." A file of complaint forms and information on the action taken can serve as a vital record in assisting purchasing agents to deal effectively with poor performance on the part of bidders and suppliers. In additions, complaint records can be used as criteria for deleting suppliers from the bidders list and in deciding which of two equal low bidders should receive an award.

Records of complaints, actions taken, and final resolutions should be filed and be accessible to all who have need to review them. In some systems, the purchasing agents keep individual complaint files on the suppliers on their bidders' lists. This procedure reduces accessibility and the usefulness of information concerning suppliers who sell several products that are handled by different purchasing agents. If not maintained on a computer, complaint files should be arranged and indexed so that all complaints about a particular supplier can be quickly collected. Where complaint records are kept with other vendor records rather than centrally filed, the complaint information should be identifiable for easy retrieval. A simple means of doing this is to put complaint records in colored folders that contrast with those used for other records. **Since complaint files are public records and possible evidence in litigation, care must be taken to prescribe by rule or regulation the form and substance of these records.**

The management information system should seek to incorporate vendor performance with other computerized vendor data.

An effective reporting procedure includes periodic reviews and checkpoints for action. Guidelines should be established indicating that when a certain number of complaints about a supplier have been received within a given period of time, the supplier's record should be reviewed for appropriate action. Such actions can entail visiting the supplier to discuss his performance, writing letters that caution him against continued poor performance, and informing him of criteria for removing him from the bidders list. Factors such as the number of complaints, the nature and seriousness of the complaints, and the supplier's cooperation in rectifying situations that produce legitimate complaints are pertinent in deciding the severity of action needed. The guidelines should be directed to individual commodities, since suppliers may perform well in one commodity area and unacceptably in another.

Complaints signal poor performance which, if sufficiently serious, can properly be a basis for withholding payment to the supplier. Inspection and complaint procedures should provide that copies of the reports can be sent to the finance department to stop payment until the problems have been corrected. Even beyond this, some purchasing programs do not permit payment on any deliveries of designated types of items (e.g., certain kinds of installed equipment, technically sensitive equipment, or items exceeding a specified dollar amount) until they have been inspected and a written acceptance report has been filed.

COMMUNICATION WITH SUPPLIERS

Inspection procedures should cover the manner in which complaints or unsatisfactory deliveries will be resolved. In some systems, the inspector contacts the supplier to arrange a remedy for the deficiency. The inspector makes arrangements that he feels are appropriate to the circumstances. In other purchasing systems, inspectors report the situation to the purchasing agent who, then, initiates action with the supplier. Both methods seem to

function very well in some cases and moderately well in others, but in either case nonconformance with specifications, poor performance, and other vendor complaints require prompt decisions that correct the problems. These decisions should be the responsibility of the central purchasing function. It may be necessary to revise a delivery schedule, cancel a contract, or initiate a new purchase action. A written warning to the supplier or even removal from the bidders' list may be in order, and such actions are properly the province of the central authority.

Central purchasing is responsible for admitting firms to the bidders list and therefore must be aware of complaints as first-hand information regarding the willingness of suppliers to cooperate when difficulties arise. This is also part of central purchasing's contract administration responsibility. For overall consistency as well as for the benefit of suppliers, there should be a single agency authorized to take official action with respect to any aspect of a purchase. When suppliers are forced to look to different agencies for answers to the various kinds of questions that can arise involved in a transaction, the process becomes frustrating and time-consuming, especially where complaints are involved.

As previously indicated, some systems provide that the inspector advise the supplier of deficiencies and agree with him on a specified number of days to perform according to the contract. If this is accomplished, an information report is sent to central purchasing. If further action is necessary, the purchasing agent contacts the supplier. This approach keeps central purchasing in the mainstream, and often facilitates a prompt solution.

Inspection is a necessary protection against a vendor's ability to evade the purpose of competitive bidding by delivering inferior goods. The integrity of the purchasing process demands that goods and services be furnished as specified or, where this is not done, that measures be taken to satisfy the contract. Among measures available are requiring the supplier to make any necessary correction or to replace the item, in either case at no cost to the purchaser. If he is unable to do either of these, the purchaser should have a contractual provision to resolicit or to purchase the items on the open market and charge the defaulting contractor with any excess costs occasioned thereby, including all costs incidental to the repurchase. There also may be liquidated damages which can be invoked or specific damages which can be claimed. Where the contractor is a chronic or serious violator, suspension may be in order, or debarment as a future supplier.

12. Safeguards

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Provide public access to the procurement process by requiring the publication of all purchasing laws, rules, regulations and procedures, the public notice of solicitation of bids and proposals, the documentation of specific actions in the procurement process, public bid openings, and public access to other records except unopened bids, documents upon which an award is pending, and trade secrets, test data, or similar proprietary information.

Provide criminal penalties for attempting to influence awards through offers of something of value and for accepting such offers; provide that all guilty parties be financially liable to the government for any losses that the government incurred as a result of any award which was so influenced.

Provide that where contracts are declared void by reason of a conflict of interest, the beneficiary of such conflict of interest will be liable to the government both for the amount of any monetary gain realized and any loss that the government suffered as a result of the contract.

Set forth the conditions under which the government may be liable for a contractor's provable costs under a contract which results from a conflict of interest.

Require a fidelity bond to protect the government against losses caused by malfeasance or misfeasance of government officers or employees who can influence the award of public contracts, if no provisions are made for such a bond elsewhere in law.

Require that a code of ethics or standard of conduct be published governing the performance of elected and appointed officials, government employees, and non-employees associated with government contracts, and provide for criminal, civil, and administrative sanctions, penalties, and disciplinary actions for violation of such standards as applicable.

Establish personal liability for government personnel who authorize or make purchases in violation of applicable statutes, rules, or regulations.

Authorize the central purchasing office to require the submission of cost and pricing data where competition is inadequate or unavailable, and authorize the audit of books and records pertaining to cost pricing data and to the performance of a contract where price is not firm.

Require a procedure, under purchasing rules and regulations, for resolving protests and complaints and breach of contract, and authorize central purchasing to resolve such disputes.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Require immediate dismissal of government employees convicted of a conflict of interest violation.

Require central purchasing to maintain surveillance of "back-door selling," and to prescribe measures to counter its effect.

Establish rules governing payments from imprest or petty cash funds.

Set forth written policy covering association and relationship of government employees and vendors or potential vendors.

Prohibit purchase being made for or on behalf of government employees.

Recommended Practices

The central purchasing authority should prepare written procedures designed to detect and prevent the circumvention of purchasing laws and rules.

Central purchasing should have written guidelines for the use of cost and pricing analysis.

Central purchasing should have a system for evaluating vendor performance to protect the public against unreliable suppliers.

The central purchasing authority should establish a program for continuing communication and coordination with the appropriate law enforcement units who are responsible for dealing with organized crime matters.

Public purchasing and contracting demands a variety of safeguards. A variety is necessary because in addition to the public interest, which is paramount, purchasing serves the interests of numerous government agencies with responsibility for diverse programs, of bidders and those who might wish to bid, of successful bidders and contractors, and of others who are directly and indirectly involved in the conduct of government business.

Structures and procedures in the purchasing process are established not only for effectiveness, but also to guard against improper actions, or the appearance of improper actions, by government personnel and by sup-

pliers. Centralization, for example, transfers purchasing authority from using agencies, which may have parochial interests, to an office, which must abide by professional impartiality. Requirements for competitive bidding, solicitation of qualified suppliers, and award to the best advantage of the taxpayer are intended to prevent awards based on arbitrariness, on favoritism, or on fraud. Central control over specifications helps to eliminate undue restrictions which favor certain suppliers.

The discussion in this chapter may seem harsh in prescribing restraints and penalties. The objective, however, is to conserve public funds and inspire public confidence. Any erosion of honesty, integrity, and openness is more injurious to public purchasing than to most other public pursuits, and a shadow of doubt can be as harmful as misconduct itself. Hence, safeguards must seek to be fail-safe.

PUBLIC INFORMATION

Safeguards for the integrity of the purchasing process begin with a suitable procurement statute or ordinance supplemented by written procurement procedures, adequate records on each purchase, and public access to these records. Wrongdoing in the expenditure of public funds is more likely in an atmosphere of secrecy, where awards are made in some vaguely defined manner without sufficient substantiation. Records of a transaction should document or reference each step of the process involved in establishing the specification, soliciting prospective bidders, the bidders responses, what the responses were, who received the award, what the contract terms were, and whether the contact was performed satisfactorily. The record should show the basis for any deviation from the normal process, such as making an emergency purchase or finding a low bidder non-responsible. Except for unopened bids, trade secrets, and bids on which awards are pending, purchasing records should be available for public inspection upon request. All purchasing laws, rules, regulations, and procedures should be published. This is the general rule of most centralized purchasing systems, and experience shows that interested persons do request such records and information from time to time with little or no disruption of the purchasing process. Such requests usually can be handled by clerical personnel. Not only do public records help keep prospective bidders informed and more competitive, they show the public that the purchasing processes are being carried out honestly.

By the nature of public purchasing, it is appropriate that sealed bids be opened in public. Virtually all states and many cities and counties make such bid openings accessible to the public. Those who do not should do so; there is no reason to deny or to limit attendance at bid openings.

CORRUPT INTEREST IN PURCHASES

The overall openness of the purchasing process should be reinforced by legal deterrents to specific actions that can damage the integrity of the purchasing process. Parties who can influence the award of a contract should not have any personal interest in that contract. Attempts to influence awards through offers of things of value, as well as acceptance of such offers, should be criminal offenses. The majority of state and local governments have general legislation covering conflicts of interest, but many statutes suffer from the paradox of being so broad that their application to a specific situation is uncertain, but not broad enough to cover all specific transgressions against which they are directed. Therefore, half of the states have seen fit to incorporate conflict of interest sections in the purchasing statutes, and specific prohibitions in purchasing law or in rules and regulations against the offer or acceptance of things of value to influence an award.

Conflict of Interest

Conflict of interest statutes prohibit people who can influence the award of government business from being in a position to profit financially or through other advantage. Otherwise, they would be constantly torn between self-interest and objectivity. Because of the difficulty in determining whether a contract is in fact tainted with self-interest, statutes usually invalidate any contract that could have been influenced by the self-interest of those who are the subject of the law.

Laws governing conflict of interest should cover all elected and appointed officers and employees of a jurisdiction who could act to influence award of a contract. Although it is argued that strong conflict of interest statutes may discourage capable persons from government service, adequate protection in this area is necessary. Questions as to whether statutes should be more or less strict should be resolved in favor of strictness.

Conflict of interest laws now in effect reveal wide variances in persons covered and the prohibitions placed upon them. Persons who are subject to a conflict of interest law range from the chief purchasing official only to all employees of a governmental entity and, in some cases, close relatives of the primary subjects of the statute.

Some statutes prohibit certain individuals from specific activities, such as conducting an outside business, or signing a contract with their own agency or with another agency of the jurisdiction. More stringent statutes forbid former employees from representing a seller within two years after termination of employment, or giving assistance for two years following employment with the jurisdiction in a transaction which, during that period of time, had been connected with the person's official responsibility.

Statutes often bar participation in businesses that sell to the government, including serving as partner, board member, officer, or employee of such a firm. In addition, holding any significant amount of stock may be prohibited. One state statute even forbids negotiating or discussing prospective employment with a business that sells to the government.

A model purchasing ordinance prepared by the National Institute of Municipal Law Officers recommends, with provision for exception under certain circumstances,

that a purchase order or contract be void in which any officer or employee of the city is financially interested, directly or indirectly. Article 12 of the ABA Model Procurement Code treats the subject of conflict of interest in detail and proposes a variety of civil and administrative remedies.

These diverse approaches to a common problem, or set of problems, are indicative of the need for statutory coverage of conflict of interest in public contracts. As a minimum, the coverage should apply to elected officials and to appointees not subject to civil service or merit system employment, to all employees in purchasing, and to any officer or employee of an agency with respect to purchases made by or for that agency. The latter are often overlooked, even though experience reveals the strongest preferences or favoritism for suppliers and their products are found in using agencies.

The coverage also should prohibit those subject to the statute from having a financial interest in an enterprise doing business with the government. The statute should require implementing rules and regulations, and provide for exception under circumstances set forth in the rules, such as where a requirement is available from only one source.

A different aspect of conflict of interest relates to making purchases for employees. In earlier times, this was a widespread practice in the industrial sector, which allowed employees to make purchases from company store rooms and would permit items to be ordered for employees at "company prices." More recently, the practice has decreased substantially in the business community, and it has always been improper in the public sector. Private gain from the purchasing power of the government should be prohibited by statute, rule, or administrative procedure, and 41 states now do so. As a state attorney general wrote in 1938, "No purchases should be allowed for personal use out of private funds under (state) contracts."

Penalties

Among the penalties for violating conflict of interest statutes are payment of damages, the criminal penalties of a minor felony, removal from office, and a permanent disbarment from holding office or employment with the jurisdiction. In most conflict of interest situations, the individual involved realizes that a conflict of interest exists. Because of the serious violation that such a situation does to the integrity of the purchasing system and to confidence in government generally, prosecution as a felony is appropriate. Where the individual involved might not have known of the conflict, he will be protected by the requirement that intent must be proved beyond a reasonable doubt before he can be convicted. Statutes should provide for immediate dismissal from office upon conviction and bar subsequent government employment, unless the conviction is overruled.

Some courts have held that a contract resulting from a conflict of interest situation is void, even though it might be the most advantageous for the government. Others have ruled that if the contract results from sealed competitive bidding, then the conflict of interest statutes should not apply. The first finding is the more appropriate. A person who can submit a bid and then be in a position to influence the award, may attempt to use influence to have another bid bypassed. The same can be true where a legislator, executive officer, or employee disqualifies himself from acting on a contract in which he/she has an interest. This should not give validity to the contract, since a person who disqualifies himself/herself from official acts does not necessarily disqualify his/her influence.

Every contract resulting from a conflict of interest should be declared void, and the public officer or employee involved should be liable to the government for the amount of any gain realized plus the amount of any loss that the government suffered as a result of the contract. Contracts resulting from conflicts of interest must not be allowed to be profitable. However, innocent people, such as uninvolved stockholders in a corporation in which a government employee held a significant amount of stock, can be unduly injured if the vendor is not allowed any recovery under such a contract. Consequently, the government should limit its liability on such contracts to the provable costs of the contractor.

Kickbacks and Bribes

Statutes covering attempts to influence an award by offering something of value to government personnel use a wide range of terms to describe the types of offers that are prohibited, including promise, obligation, contract for future reward or compensation, emolument, gratuity, contribution, offer of employment, loan, reward, rebate, gift, money, and "other things of value." Some statutes which contain long lists of prohibitions fail to include the important term "giving and receiving." Laws should deal with both actions equally and harshly. One such statute establishes the presumption that when an interested party makes any gift to purchasing personnel, the gift is made and received for the purpose of influencing purchasing decisions. This statute places the burden upon those who present and receive a gift to prove lack of criminal intent, rather than the government having to prove such wrongdoing.

Acts of giving and accepting something of value to influence the award of a contract should be criminal offenses, whether the exchange has the intended effect or not. "Award of a contract" should be interpreted broadly to pertain to the characteristics of a specification, to comparisons, tests, or recommendations for award, or to other activities related to the evaluation of bids and offers. Contracts awarded to a party or a firm that sought to influence the outcome by offering something of value to government employee should be declared void. Unlike a conflict of interest where innocent individuals may be involved, where something of value is exchanged to influence a purchasing decision, not only is the receiver

culpable, but the management of the firm whose representative made the tender can reasonably be presumed to have known about or condoned the action. This presumption should be made a statutory rule. Unless the firm can prove its agent acted entirely on his own, without the knowledge of management, the jurisdiction should be released from current and future financial obligations to the firm involved. If it can be proved the agent acted on his own, the government should be liable only for provable costs. All guilty parties should be financially liable to the jurisdiction for any losses the government incurred as a result of the contract. In many jurisdictions, officials and employees involved in determining awards are bonded, and the government can recover the value of any monetary damage it suffers due to their malfeasance or misfeasance.

Organized Crime

A threat to the soundness of public contracting that has not been fully recognized is the infiltration of organized crime into legitimate firms that do business with government. This is a problem that should no longer be ignored. Some purchasing programs, as a part of the prequalification procedure for their bidders lists, attempt to screen businesses with convicted felons as officers or board members, but few go beyond this. More effort is necessary to help public purchasing avoid business relationships with criminals. Whether purchasing can disqualify a firm with a good performance record by reason of past illegal actions on the part of directors, or key employees, is debatable.

Nevertheless, the problem of governments doing business with criminal elements needs to be addressed. This can be handled most effectively by central purchasing keeping the jurisdiction's legal unit informed of suspicions it encounters in reviewing business data, in discussions with company representatives, and in the marketplace generally.

The extent to which the purchasing office can refrain from doing business with firms suspected of organized crime affiliation depends upon the applicable purchasing laws and the nature of the information itself. Some jurisdictions already have, as part of statutory criteria for determining a responsible bidder, "The character, integrity, reputation, judgment, experience, and efficiency of the bidder." The usefulness of purchasing in helping to combat organized crime rests largely with statutory authorizations and direction from the legal community.

Contingent Fees

Influence peddling is usually compensated by payment of a fee as a result of obtaining a government contract. A statutory prohibition against such contingent payments is helpful in preventing this activity.

Beyond this, officers and employees of a jurisdiction should be banned from acting as agents of bidders or contractors, or representing them in any manner before the government.

PURCHASING PROGRAM INTEGRITY AND CREDIBILITY

The nature of their duties makes it necessary for purchasing officials to remain independent, free of obligation, and above suspicion. Their impartiality and fairness cannot be compromised, and this must be applied equally to bidders and contractors. There should be a written set of rules which describe the proper relationship between purchasing employees and vendors, and which set forth standards of conduct and a code of behavior expected of both parties. (See the discussion of policy and vendor's manuals in Chapter 16.)

Maintaining the integrity and credibility of the purchasing program requires provisions for and control over a number of disparate factors. For example, there must be a workable procedure for bidders and contractors to file complaints and receive a prompt and fair hearing, and there must be control over circumvention of the purchasing procedures which are prescribed by law and rule.

Other factors include review and approval of recommendations for award of contracts, inspection and testing, the use of bonds, "back-door selling," audits, breach and default of contract, documentation and public records, cost and price analysis, vendor evaluation, and the suspension and disbarment of bidders. Some of these are discussed here and some in other chapters.

Credibility and public confidence are vitally significant throughout public contracting, and their absence is damaging to a program, even though no dishonesty has occurred.

Circumventing Purchasing Authorization

Obviously, any purchasing program is harmed deeply by actions involving bribery, kickbacks, conflict of interest, or similar acts. When such cases of corruption are discovered, strong and direct action usually is taken to rid the system of the people involved and to prevent a recurrence. However, when agencies merely circumvent the purchasing laws and rules, the situation can appear trivial compared to a case of bribery or conflict of interest. In most purchasing systems, when such unlawful purchases are discovered, no appropriate action or measure is taken to prevent their recurrence, or is not adequate, and the problem repeats itself. The total impact, though less spectacular than instances of corruption, ultimately may be more harmful to the purchasing system.

Often circumvention simple takes the form of efforts by using agencies to obtain a preferred brand of an item or to avoid the competitive bidding process. Methods used involve practices such as ordering an item from a vendor without requisitioning in the prescribed manner, creating emergency purchases in situations that are not, in fact, emergencies, and dividing requirements into smaller amounts to bring them below the dollar limit for which competitive quotations or sealed competitive bidding is required.

Strong effective action has not been customary on the part of most jurisdictions in dealing with violations of this kind. Nor is the action usually directed to the source of the problem — the persons who made or authorized the purchase. Some purchasing laws call for after-the-fact approval or review of emergency purchases and circumvention of the law is not discovered until after the transaction has been completed. In many jurisdictions, central purchasing or auditors regularly report instances where the purchasing statute or rules have been disregarded, but lack of preventive follow-up permits the practice to continue.

The central purchasing office potentially can rectify a specific instance if its approval is required prior to payment being made. It is not uncommon, however, for purchasing officials to ratify unauthorized and improper purchases because of a lack of clear authority or a disinclination to engage in disputes with other agencies.

The purchasing systems that are successful in dealing with this kind of problem are those that place the responsibility squarely upon the using agency personnel who made or authorized the purchase. Legislation in these jurisdictions provides that any such purchase does not obligate the government, and that the person making such a contract, or the administrative head of the agency involved, is financially liable to the vendor. By refusing to give approval, the chief purchasing official can force the agency personnel at fault either to pay for the purchase or go to the legislature and ask for a "moral obligation payment" to the vendor. This type of statutory provision affords a proven means for exercising control.

"Back Door" Selling

An all too common practice of suppliers and would-be suppliers is that of unethically cultivating favor among program personnel in using agencies for their products and for themselves as suppliers. The cultivation can range from hard-sell tactics to fraternization to expense-paid trips to the vendor's home office or plant to gifts, bribes, and kickbacks. Most often, however, the relationship is less pernicious. The sales representative is helpful and ingratiating, offering technical data and other information. He becomes a convincing friend of the using agency personnel. It is a sales method that largely by-passes central purchasing and, in doing so, creates friction between using agencies and the central purchasing office. Frequently, by the time central purchasing receives a requisition, the agency has been sold on a certain item or supplier, the purchase requisition is accompanied by specifications that are unduly restrictive, which carry a note calling for "No Substitution," or for a delivery or performance time only the favored supplier can meet, or has some other attempted justification for eliminating competition. Under these conditions, when purchasing does its job and opens the specifications to competition, obtains competitive bids, and perhaps awards the contract to a different supplier, the using agency is unhappy and antagonistic toward the purchasing process.

Surveys show that state and local government purchasing officials are almost unanimously of the opinion that "back-door" selling interferes with or impairs fair competition.

The policy of openness in government makes it difficult for public purchasing to control this problem. In contrast to industrial purchasing, it cannot prevent marketing and sales representatives from directly calling on and visiting with user departments. The situation is even more difficult to manage where the agencies, instead of central purchasing, issue the majority of purchase orders. But central purchasing can moderate the effects of the practice by recognizing it in its policy and operating manuals, by treating it in a booklet or pamphlet for vendors on "How to Sell to the (state)(city)(county) of _____," by keeping administrative heads of using agencies alert to the harm that it does, and most of all, by firmly refusing to be swayed by agency partiality or favoritism.

Another form of "back-door" selling involves non-bidders or unsuccessful bidders undermining indefinite quantity contracts established by the central purchasing office. This problem can be handled, as it should be, by laws and rules that do not allow purchase contracts to be used arbitrarily or permissively.

Pre-Award Review

Almost all states employ some method of review of a buyer's decision, or more correctly, preliminary decision, on the action to take following the evaluation of bids. With the exception of small purchases, decisions regarding award of a contract are usually subject to approval by a buyer's immediate supervisor or a higher purchasing officer, but a number of jurisdictions provide additional safeguards, such as review by legal counsel or concurrence by a constitutional officer or body. In many local governments, action taken under the formal bidding procedure is approved by the governing body, such as a city council or board of county commissioners.

Bidder Responsibility and Contractor Performance

Questions arise throughout the purchasing and contracting process concerning the performance capabilities of both prospective bidders and successful bidders. Protecting the public interest includes the prequalification of bidders, which involves criteria for including prospective bidders on mailing lists. Bid security and performance bonds may be required, especially for certain types of contracts, although these, alone, do not insure that a contract will be carried out successfully. Inasmuch as contracts may be awarded only to bidders deemed to be responsible if a bidder or proposer, who otherwise would receive the award, is judged non-responsible, the reasons should be documented for the record. A program of vendor evaluation affords the best grounds for the suspension and debarment of bidders, which should be authorized by statute under rules and regulations adopted for the purpose.

For cases of apparent misrepresentation, breach, or default by a contractor, a well-defined procedure is needed to conduct impartial hearings and arrive at satisfactory remedies, including penalties. The procedure should be established in accordance with statutory authority, which should include requirements for the formulation of implementing rules and regulations.

Resolution of Complaints

The purchasing process is subject to complaints, protests, claims, and controversies. The credibility of the purchasing program is affected by the manner in which disputes are received and treated. Many present purchasing statutes are deficient in not providing or requiring a procedure for hearing and responding to protests and claims, although the enactment of laws governing administrative procedures has helped to fill this void.

In prescribing means for resolving disputes, whether they concern prospective bidders, actual bidders, contractors, using agencies, or interested citizens, it is of utmost importance to emphasize the desirability of trying to clear up controversies through informal discussion. Many times, conflicts arise merely from misunderstanding or lack of full or correct information, yet they lead to unnecessary formal proceedings that represent substantial and costly expenditures of time, which the average purchasing program, characteristically understaffed, can ill afford.

Unlawful Purchases

When it is found that a solicitation is unlawful, it should be canceled. Unless altogether unfeasible, a purchase made or contract awarded contrary to law or applicable rules and regulations should be terminated, unused merchandise returned, and employees who are responsible held personally liable for any cost involved.

Audits

There are two distinctly different kinds of audit that affect the integrity of the purchasing program. One is the authority of the jurisdiction — state, city, or county — to audit the records of contractors and subcontractors as they relate to the performance of a specific contract. This right should be specifically authorized by statute (though frequently this is now not the case) with conditions and procedures for such audits prescribed in rules and regulations. Generally, audits are appropriate in connection with negotiated contracts, contract modifications, and questions concerning a contractor's reliability or the adequacy of its business practices. Such audits need not be performed by the purchasing office. They may be done by a private accounting firm, but at the request of the chief purchasing official.

The other type of audit important to purchasing is a periodic and systematic review of its own operations. In addition to a fiscal audit, there needs to be a review for compliance with the laws, policies, rules, and regulations which govern the purchasing program. Audits of this kind are usually conducted by one of the other governmental agencies; in most states, for example, they are performed by the state auditor or a legislative fiscal office. As an extension of this, the central purchasing office should be authorized to have oversight of purchasing operations of using agencies, including review of pertinent records. Audit of invoices and accounts payable should be the function of the jurisdiction's accounting office and *not* the purchasing office to establish appropriate checks and balances.

Other Protections

The soundness and credibility of the purchasing program need to be supported by other policies and practices. A structured inspection and testing program is a valuable asset, as discussed in Chapter 11. The submission of cost producing data, and the conduct of cost and pricing analysis, should be required by statute for certain kinds of contracts and under certain conditions to help guard against prices being unreasonable or excessive. The establishment of a policy board to adopt operating rules and regulations, maintain general surveillance over the purchasing process, and help provide a barrier against undue political influence is a possible option for large jurisdictions.

The importance of adequate documentation and good public records cannot be overstressed. Operating rules and procedures manuals should be careful to designate all points at which and on which documentation is needed and all decisions that call for written determinations to be made.

Finally, it should be remembered that a requirement for purchases and contracts to be based on competitive sealed bids, publicly opened, is itself a primary safeguard, and that a right to reject any and all bids and offers, in whole or in part, provides further protection of the public interest.

ETHICAL STANDARDS

Many people other than procurement staff are involved in business transacted by a governmental entity. Chief among these are bidders and contractors, and the personnel of using agencies for which article or services are purchased. In addition, there are those who for political, pecuniary, or other reasons may want certain products bought or certain vendors to receive contracts.

Every governmental jurisdiction needs a strong pronouncement to the effect that government is a trust for the people. This can be expressed most effectively in the form of statutory law requiring the adoption and promulgation of ethical standards applicable to all persons involved in conducting and receiving the government's business.

13. Supply Management

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Charge central purchasing with the responsibility for overall supervision and ultimate control over the inventory of and the transfer, trade-in, sale, or other disposition of personal property as determined to be in the best interest of the jurisdiction.

Require that using agencies identify and declare excess and surplus items and report them to central purchasing.

Provide that the proceeds from transfer, trade-in, or sale of personal property be credited to the owning agency.

Authorize transfer of surplus personal property at fair market value to other government jurisdictions and to not-for-profit organizations.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Establish an inventory management and surplus property section within the central purchasing office.

Assign to central purchasing the duty to keep informed of items under federal surplus property if the federal surplus property program is not under the management of the central purchasing office.

Set forth central purchasing's authorities and responsibilities in identifying items as surplus, and provide guidelines for determining the most appropriate disposition method (e.g., transfer, trade-in, sale) for given types of situations.

Require defined procedures to encourage and facilitate the transfer of excess or surplus property to or among other jurisdictions prior to other disposition.

Recommended Practices

Methods and procedures for handling the sale and other disposition of surplus products should be published.

Information as to the availability of excess and surplus property should be maintained centrally and made known systematically to using agencies.

Sales of unneeded items should be held frequently to aid agencies in the disposal of surplus property.

Needs lists should be used as an effective technique in transferring excess or surplus property.

Some items, such as automotive equipment, should be cleaned and suitably prepared to enhance resale value.

Where trade-in is to be considered on a particular piece of equipment, the Request for Bids should call for bid prices for the new or replacement item with and without trade-in and provide that the award may be made on either basis.

Inventory management, materials management, logistics management, and supply management are terms which refer to responsibility for equipment, materials, and supplies after they are acquired. The responsibility involves storing and distribution, inventory control, requisitioning in the right quantities at the right times, transferring unused items between agencies, and disposing of surplus property. The importance of these functions are easily overlooked. Many potential savings and other benefits to the taxpayer that are achievable through expert acquisition can be dissipated and lost through poor property management.

Management philosophy has long recommended that central purchasing should have overall responsibility for the policy aspects of personal property management, as well as general supervision of central storerooms and warehouses. In doing so, accountability for the property rests with the program agency which houses and uses it. In the case of a store or warehouse facility that is operated by central purchasing, however, accountability for that function resides with central purchasing.

Centralized oversight of inventories that are scattered widely among using agencies has been greatly facilitated by refinements in automatic data processing and, especially, the use of remote computer terminals. Many state and local governments are developing commodity classification codes and, to a lesser extent, uniform inventory programs that apply to all agencies. A valuable adjunct to this can be the development and application of replacement schedules for different kinds of equipment.

IDENTIFYING SURPLUS AND SCRAP

The disposition process deals with three categories of items — excess, surplus, and obsolete. For the purpose of this discussion, excess items are those no longer needed by the holding agency, but are suitable for transfer within the state or local government. Surplus items are those still useful, but the jurisdiction no longer has a reasonable need for them. Excess and surplus derive from any of several causes, including overbuying, decrease in use with resulting inventory levels becoming too high, items being

replaced by newer ones, programs being changed or discontinued, or items no longer serving the purpose for which they were purchased. Obsolete property is inventory without utility, due either to technological development, wear and tear, or damage. Obsolete property may be "salvaged" with some value because parts can be recovered and reused, or "scrapped" with no value except its basic material content.

"Surplus property" is the term used generically to refer to any class of property being disposed of as no longer needed or usable.

Timely identification of surplus and obsolete material is essential to an effective disposition program. Delayed identification brings on higher maintenance and storage costs and further deterioration of the items. As part of its inventory management responsibility, central purchasing should require review of inventory levels by operating departments and other using agencies to determine whether excess stock is on hand. There is a natural inclination on the part of owning agencies to stockpile items for an unknown or undefined future use. The single most effective way to overcome this, and to foster an effective surplus property program, is to allocate the proceeds from disposition of the property to the releasing agency.

The responsibility central purchasing has for general supervision and ultimate control over inventory and surplus programs should not be viewed as placing purchasing in conflict with using agencies. The arrangement is a logical and proven one. Frequently, inspectors who work out of central purchasing and inspect vendor deliveries also assist using agencies in identifying and transferring surplus property. Written procedures setting forth guidelines for close coordination between purchasing and using agencies are important in helping ensure success of the program.

METHODS OF DISPOSITION

When items become excess, surplus, or obsolete, it is the duty of using or owning agencies to report them promptly to the personal or surplus property section of central purchasing. With this information, the surplus property section must examine alternatives for the most advantageous handling of the items. Using agencies usually are not in a position to determine the best alternative, nor should they be. Disposition is a minor function of a program agency and its normal preference is to proceed in the least troublesome way. Central purchasing, on the other hand, has the perspective and capability for carrying out disposition to the overall benefit of the taxpayer.

A form designed specifically for reporting surplus property is highly beneficial. In making the reports, the owning agency can designate an amount it wishes to recover for each item, with the understanding that the requested figure will not be made public prior to transfer or to the opening of sale bids. The figure will not represent a guaranteed minimum return, nor govern whether transfer or sale is carried out.

The decision by the surplus property section on disposition depends upon the nature of the items and the need of other agencies. Items can be refurbished or reconditioned, transferred as is, sold by auction, sealed bid, or posted price, or destroyed. Destruction is rarely appropriate.

Transfer

As a rule, the best method for handling an item no longer needed by one agency is to transfer it to another agency that has a use for it. But prior to a decision to transfer, consideration should be given to the potential for recycling. Maximum economy may be attained by refurbishing the article, as with many types of furniture, or by reconditioning it, as in the case of a school bus, either for continued use by the owning agency, or for transfer at a higher value and utility.

The property section should have a systematic procedure for maximizing the potential for transfer. In one state, copies of using agencies' purchase requisitions for certain kinds of goods are processed through the personal property section, which determines whether there may be property available from another agency to fill the need. Other procedures include periodically circulating lists among all agencies of currently available excess and surplus items. To encourage agencies to avail themselves of this service, the lists should be compiled from any type of requests, written or telephoned, and using agencies should be assured that an expression of a need is not a commitment to accept an item. The value at which the property is transferred may be set either by mutual agreement between the agencies involved or by the surplus property section of central purchasing.

Transfer can be an especially effective technique when ingenuity finds new uses for items. For example, central purchasing transferred an excess fire engine pumper to an agency which could use it for dust control by watering roads on detours. In another example, plexiglass drums originally purchased for lottery drawings were transferred to prison shops where the plexiglass material was used for security windows, nameplates, shelving, and hobby shop material.

Where transfers between agencies cannot be made, some surplus programs refer priority lists for transfer or sale to other governmental units or other tax-supported activities, and property transfer becomes another form of intergovernmental cooperation. If an item cannot be transferred, it usually can be sold or traded in, depending upon its condition and the market.

Sale

Preconditioning. A program of conditioning units prior to sale can play sizable dividends, particularly in the disposition of vehicles. Much of the work need only be cosmetic to increase sales value, such as washing and polishing the exterior and cleaning the engine, interior, and trunk of passenger cars. Good public relations and

public confidence are valuable assets to the surplus property program, and these are enhanced by conditioning vehicles to place them in a more attractive and safe operating condition. In addition, all vehicles should pass a basic safety inspection prior to public sale.

Auctions. The auction method of sale is the standard disposition procedure for some jurisdictions. Auctions should be publicly advertised, supplemented by notices mailed to regular bidders. Professional auctioneers can most effectively handle the sales, as well as assist in the preparation for the auctions. Auctioneer services are competitive and biddable. After the auction is announced, interested parties can inspect the items either at the auction site or at the user's location. Other means for providing information on items to be offered for auction include giving descriptive ratings of the condition of equipment, pointing out odometer readings of vehicles, listing known defects, and providing pictures. Some states hold auctions at different locations which provide opportunities for buying closer to the public.

Disadvantages of auction sales versus competitive sealed bidding are time and costs necessary to transport and assemble items at an auction site, less frequent sales, and longer holding periods for surplus property.

Sealed Bids. Many purchasing programs sell the majority of their surplus, salvage, and scrap items by sealed bids. Sealed bid sales are similar in many respects to sealed bid purchases, and can be handled frequently and routinely. Bids are received and opened in a central office, with property offered for sale on an "as is-where is" basis whether at a central location or at locations of using agencies throughout the jurisdiction. The sale is given public notice, but competition is achieved primarily from solicitations mailed to prospective bidders according to a bidders list maintained for the purpose. Bids are opened at the time and place announced, with the government retaining the right to reject any and all bids. The bid documents carry at least line item descriptions, and interested parties are offered opportunity to inspect the items prior to bidding. Overall, the sealed bid procedure can reach the largest number of prospective bidders and require a minimum of assembly of merchandise and sales preparation.

There is evidence to show that the sealed bid procedure can move surplus property most expeditiously and economically, with sales conducted effectively by a central property section on a weekly basis.

Commercial Markets. Some types of items can be sold advantageously at or through established commercial markets. Among these are antiques or art pieces, data processing equipment, livestock, and various kinds of produce grown in connection with agricultural research programs. In such instances the seller, often an auction market, normally retains a percentage of the sales price.

Sale of Scrap. Almost any surplus property can be sold as scrap. A potentially profitable technique used too infrequently in selling scrap material is separating it into homogeneous parts or materials. This can be somewhat time consuming, but the separate sale of like components or materials will bring a higher return.

Posted Prices. For items for which there is no regular market, demand is erratic, or prices received on competitive bids or auction are unacceptable, a posted price offers another method of sale. In this case, the price is pre-established and the item is available to the public on a first-come basis.

Conditions of Sale. The government should make it clear to all buyers that it takes no responsibility and makes no guarantees for items sold. To be fair, the sale information should describe the conditions of the items and list known defects, but it should state that responsibility rests with the buyer. Conditions of sale, for example, should include in advertisements, in solicitations, and in notices posted at the site of sale:

- It is the buyer's responsibility to remove the items within a stipulated time after the purchase.
- No guarantees or warranties are given by the government for the items.
- Major defects, if known, are listed, but the government makes no claim that all defects are known.
- No sale will be invalid if defects are discovered in the item after the sale.
- The government assumes no responsibility once the items are sold.

Sales to Employees. To reduce opportunities for deception and to help avoid any appearances of impropriety in the disposition program, it is sound policy to adopt a rule prohibiting sale of surplus property to any employee of the department or other government agency that owns or is releasing the item or is, otherwise involved in the sale.

Trade-In

In replacing obsolete property, it is sometimes advantageous to trade in the old equipment. Owning agencies often request trade-in as an expedient because it is an easy method of disposal and some value is realized, Experience shows, however, that outright sale, by sealed bids or by auction, usually brings a higher return than trade-in. If it is decided to consider trade-in on a particular equipment item, the Request for Bids on the new replacement item should call for bid prices with and without trade-in and provide that award may be made either way. Disposition to best advantage can then be determined by comparing the trade-in offers with the estimated sale price for the unneeded item based on previous sales of similar equipment or on a market analysis.

ALLOCATION OF PROCEEDS

Proceeds from the transfer, trade-in, or sale of excess or surplus property can go either to the credit of the owning or releasing agency or into a general fund. When the releasing agency receives no monetary benefit from the transaction, it has little incentive to practice good property management. Even worse, if it receives credit for

disposition when property is traded in but not when it is transferred or sold, the agency tends to release items only for trade-ins, even though the net value to the taxpayer is less.

The most successful inventory management programs allocate the proceeds from disposition to the releasing agency. If there is fear that agencies can or will use this as a source of revenue to evade the budget or appropriations process, a budget line item, such as "receipts from surplus property", can be set up as a reserve from which expenditures are allowed only by prior budgetary authorization. Balances in the reserve account can revert to the general fund at the end of the fiscal year, or be carried over according to budgetary policy.

FEDERAL SURPLUS

Like some state governments, the federal government releases certain excess property through intergovernmental programs. Under direction of the General Services Administration, federal surplus property is allocated to several agencies in each state, one of which has a general responsibility and is designated by the state as the federal surplus agency. The state agency, in turn, distributes the property to eligible recipients. Allocations of federal property to states are made in terms of need, population, per capita income, and other factors. Eligible recipients in the state consist of all public agencies together with not-for-profit enterprises engaged in educational and health programs. States with well-developed programs use inspectors to screen items regularly at military posts and other federal installations and operate tractor-trailer trucks to transport usable items to one or more warehouses located strategically in the state where donees can inspect and acquire them. This central agency is responsible for distributing the property in a fair and equitable manner to eligible participants throughout the state.

In states where this program is administered closely with the state's own surplus program, the users have to convey their need to only one governmental unit. Storage of equipment and suppliers for both programs can be in the same facility and potential users can examine both groups of items in one visit, although items from the state and federal programs must be kept physically separated to satisfy federal accountability procedures.

A further advantage of maintaining single supervision over both the state and federal surplus property programs is the ability to match more effectively requests for purchases with the availability of surplus items. Central purchasing management should seek this type of coordination.

14. Cooperative Purchasing: Local, State, and Federal Government

ESSENTIAL ELEMENTS

Suggested Statutory Coverage

The purchasing statute should:

Authorize voluntary cooperative purchasing agreements between and among state governments, state and local governments, and local governments;

Require that procurements be made in accordance with public purchasing principles of open and equitable competition;

Require that agreements define conditions under which the cooperative purchasing will be conducted, and that participants in the acquisition process be committed to purchase prior to solicitation of competitive bids;

Require that the buyer under any purchasing arrangement/program pay the seller according to the terms of the contract, or incur a penalty;

Define cooperative purchasing as buying through public solicitation of competitive bids or competitive proposals, by two or more public jurisdictions, or by one public jurisdiction jointly with or on behalf of one or more other public jurisdictions, authorities, or agencies. Cooperative purchasing agreements may also include the resale or exchange of goods and services without competitive bidding and the shared use of facilities, procurement information, and procurement personnel; and

Require the establishment of implementing rules and regulations applicable to conducting cooperative purchasing by public jurisdictions and other public authorities or agencies.

Recommended Regulatory Coverage

The rules or regulations to implement the statute should:

Require that the parties to a cooperative purchasing action enter into a written agreement or memorandum of understanding concerning the administration of the cooperative purchasing activity; and

Specify procedures by which local governments or other non-state public agencies may participate in state awarded contracts, by which the state may participate with other states and by which local governments and non-state organizations may purchase cooperatively. Procedures should include means by which voluntary participation is made known prior to the issuance of a competitive solicitation, payment of participant fees or warehousing costs, payment of vendor invoices, signing of an agreement, handling complaints against vendors, and reporting purchases to a central source.

Recommended Practices

States and large local governments should exercise initiatives to foster, design, and administer cooperative purchasing programs.

Contiguous local governments, especially, should enter into cooperative purchasing agreements, including use of common delivery points and shared warehousing facilities where feasible.

A local government interested in purchasing cooperatively should begin by identifying goods and services likely to be of common interest to other local governments and approach them individually or through professional, regional purchasing organizations.

Cooperative purchasing is an imprecise term that refers to a variety of arrangements, by which two or more entities buy under the same contract or agreement. Since cooperative contracting necessarily extends across jurisdictional lines, e.g., a county and the cities and towns within it or adjoining county governments, statutory authorization is required.

Participation in cooperative purchasing should be based on voluntary, self-initiated arrangements. It can be advantageous for several reasons. The reason most frequently cited is to seek lower prices, or more favorable deliveries and terms. This usually applies under normal conditions. However, combined needs can be less attractive to bidders if increased volume strains production and distribution facilities. Also, in periods of product shortages or labor difficulties, large-volume contracts should be avoided in those product areas unless the larger volume of a combined contract commands favorable supplier interest.

Additional motivations for cooperative purchasing include reducing duplication of efforts and, thus, reduced administrative costs. Cooperative purchasing also facilitates sharing information and expertise about specific commodities and services, and often attracts wider bidder competition.

A less useful reason for aggregating purchases is attempting to create a demand large enough to encourage the production of newer or modified products which are not commercially available. As a practical matter, a unique product seldom is needed in sufficient volume or often enough by a state and local jurisdiction to warrant special commercial production.

FORMS OF COOPERATIVE PURCHASING

In considering the several forms cooperative buying can take, it is important to remember that a legitimate purchase contract involves commitment on the part of both purchasers and sellers. This protects the principle that a bidder know whose business he/she is bidding for and, if successful, whose business he/she has earned.

Three types of cooperative purchasing satisfy the test of mutuality; some others do not.

One of the appropriate forms has two or more jurisdictions, such as city/state, county/county, and city/county combining requirements into a single request for bids. Purchases of this kind can be definite quantities or indefinite (either estimated or "to be ordered as needed") quantities. The method necessitates that one of the jurisdictions act as lead participant in issuing the bid solicitation and, usually, in administering certain aspects of the resulting contract.

Another appropriate type is based on central warehousing. Customarily, the largest consumer among the cooperating parties orders and receives the items purchased, pays supplier invoices, and warehouses the goods. The other parties arrange for pickup or delivery from the buyer's warehouse as their needs develop and pay the buying party. Items that lend themselves readily to this kind of program include: canned fruits and vegetables and janitorial, housekeeping, office, and general maintenance supplies.

A third arrangement, somewhat like the first mentioned, combines state and local government purchasing. Such an arrangement can be sound and beneficial or flawed and harmful. A well-founded program can work equally well for definite and indefinite quantity contracts, although activity is often confined to the latter. Pursuant to a written purchasing agreement, a simple form is used by which a local government advises the state purchasing office of its wish to participate in a particular state purchase or purchase contract. For a definite or estimated quantity procurement, the form furnishes the necessary quantity information; for more indefinite quantity (open-end) contracts, the form serves as the local government's election to be a participant. The form is submitted prior to the issuance of a request for bids with the information as applicable then included in the solicitation document.

Each of these types of plans, and variations with the same underlying characteristics, provides for voluntary participation while preserving the integrity of the contracting procedure. It should be noted that where state/local purchasing is concerned, the state may find it necessary, for administrative or other practical reasons to limit participation to selected items or contracts.

Unsound forms of cooperative purchasing neglect the matter of contractual obligations. This can apply especially to what are variously called "open-end," "term," or requirements contracts, and most prevalent is the practice of local governments "piggybacking" or otherwise buying under indefinite quantity state contracts if and as they please. As Nelson Rosenbaum, former City of New York Assistant Corporation Counsel, states:

> "A requirement contract obligates the buyer to order from the seller all of the buyer's needs of the specified item during the contract period, with the seller compelled to deliver to the buyer such needed quantity. The outstanding feature of this type of contract is that the quantities are indefinite . . . There are certain legal essentials that make for a valid requirement contract. Their absence results in an invalid and unenforceable contract. (Such) a contract is not valid if (ordering) under it is determined by whim or desire . . . A valid and binding requirement contract should be worded so that the public agency must buy the quantity of the specified item it needs during a definite period only from the vendor, with the vendor agreeing to deliver this needed quantity during the contract period."

Regulations of the ABA Model Procurement Code affirm this understanding by requiring a participant under an open-ended contract ". . . to procure all of its requirements for such supply or service against the applicable contract."

A related arrangement flawed for the same basic reason is one that gives local jurisdictions a choice of buying under a state contract or obtaining its own bids; that is, they are relieved of competitive bidding only if they order under the state contract. Again, mutuality is sacrificed; the buyer has no commitment to purchase under the contract.

Beyond questions of legitimacy and enforceability, permissive types of arrangements invite wide abuse. Unobligated persons can bargain against successful bidders' prices and can shop after bids are opened and after contracts are awarded. They can put successful bidders in position to have to bid against themselves and, otherwise, can engage in behavior that is prohibited by the principles of competitive sealed bidding, competitive negotiation, and equitable competition.

Other problems arise if uncommitted third parties have not been buying under a contract and decide to begin ordering items that come into short supply. Among other things, this can further disrupt delivery to those bound by the contract, damage contractual relations, and erode good faith.

Cooperative purchasing programs need to strengthen, not weaken, the validity and integrity of public purchase contracts. There are viable, constructive ways of doing this. Other types of arrangements constitute unsound policy to be avoided.

SELECTING THE LEAD PARTICIPANT

Where local jurisdictions join in a cooperative purchasing arrangement, one of the participants needs to be designated to handle the solicitation of bids and award and administration of the contract. Deciding which party serves as the lead jurisdiction is sometimes difficult if one or more of the participants is reluctant to relinquish its purchasing authority. As a practical matter, the unit with the largest staff and most highly developed technical capability becomes the lead party unless another of the participants possesses some especially needed expertise or the parties want to divide the work among themselves. In some cases, a fee for serving as lead participant may be part of the agreement. The fee may be based on annual, semi-annual, or monthly participation on a per contract basis, be a flat amount for all participants, or be prorated depending upon the anticipated volume of purchase by each of the parties.

CONTRACT DISPUTES

As a rule, differences which develop during cooperative purchasing between a prospective bidder, a bidder or contractor, or the purchasers should be handled by the lead participant according to its procedures for protests and disputes. Such controversies may relate variously to specifications or other provisions of the request for bids, evaluation of bids and award of contract, timely deliveries, or compliance with specifications. Where the lead party has accepted goods, paid for them, and will warehouse them for future distribution and repayment from other parties, it is logical that it also handle any disputes concerning acceptability of the goods.

However, a lead party has no control over some actions and, therefore, should not be accountable for resolving them. Among these are violations of contractual conditions, including late payments on the part of other participants. For proper administration, the cooperative purchasing agreement or a supplementary written memorandum of understanding should spell out the respective duties and responsibilities of the participants, including the handling of disputes.

PROMPT PAYMENT

All cooperative purchasing agreements should require the parties to pay contractor invoices in accordance with the terms of the contract, preferably within at least 30 calendar days. Both states and local jurisdictions increasingly have become aware of the need to pay businesses promptly for goods purchased. Many have public mandates to pay within 30 days and have reviewed their purchasing and accounting procedures to conform accordingly. While most businesses recognize that public jurisdictions will pay their bills eventually, many find it difficult to carry government receivables beyond 30 days. Consequently, slow-paying jurisdictions adversely affect competition by reducing the number of vendors who are interested in bidding, or cause bidders to increase prices to cover the cost of doing business.

NEED FOR LEADERSHIP

Well-rounded cooperative purchasing programs involve more than the joint acquisition of goods and services. They contribute to numerous budgetary advantages, and can foster other intergovernmental cooperation. Aside from the economics of volume buying, cooperative purchasing assists in reducing duplication of work in preparing specifications, soliciting bids, and testing products. Successful programs need favorable laws, adequate implementing regulations, and energetic leadership and cooperation among the parties.

Large governmental purchasers have an extra responsibility to take the lead in designing and administering cooperative programs. Some states, for example, survey local jurisdictions when determining which items are appropriate for cooperative purchasing. These inquiries indicate local jurisdiction needs in terms of both specific items and delivery times. Copies of local government specifications are utilized in the state's specification-writing program. Some states also conduct workshops for state and local purchasing personnel to exchange ideas and information and to improve mutual understanding and cooperation.

Local governments need also to do their part. They have many avenues for cooperative efforts, especially with each other. When they can overcome apprehension that they might be subordinated to another government, and can resist any strong tendency to favor local vendors, local jurisdictions are better able to recognize their responsibilities to serve the public interests and manage their purchasing duties professionally and fairly. Some governments already are consolidating operational functions, such as police, fire, and sanitation, under merged government units. Extending this concept to administrative areas, such as purchasing, could provide for significant improvements for many smaller and medium sized governmental units.

Pooling resources is a natural forerunner to combining operations under merged governments. They offer numerous possibilities for improving capabilities and services. For example, a pooling of purchasing functions among several contiguous governments may afford professional staffing of the function to the benefit of all participants. Pooling arrangements also may be applied to specialized technical functions, such as commodity cataloguing, preparing specifications, inspection and testing of goods, training, economic analysis, developing buying strategies, and exchange or disposition of excess and surplus property.

SUMMARY

Public administrators associated with the expenditure of public funds have an explicit duty to insure that these funds are spent to achieve economy in accordance with the best principles and practices of public contracting. Cooperative purchasing is one major tool available to promote both of these objectives.

STATE, LOCAL, AND FEDERAL RELATIONS

The public procurement of goods and services is a complex business, a situation not yet recognized by those not engaged in it. And even with its long history as a government activity, it has only a brief history as a highly specialized and professional function. There is still a paucity of communication both among and between the various levels of government purchasing to the extent even that common basic terminology remains to be developed and accepted.

The acquisition goal of public purchasing, state, local, and federal, is the same: to obtain products and services at favorable prices and terms that meet the needs of the governmental entities served. Subsequent to the acquisition process are varied responsibilities related to storage, distribution, utilization, and disposition. And to the acquisition process should be added the duty to adhere to and reinforce the foundations of public contracting, especially those of impartiality and open competition.

STATE AND LOCAL GOVERNMENT COOPERATION

Cooperative purchasing between local governments and between state and local governments has been discussed. As suggested in that discussion, few state or local jurisdictions now have either appropriate or adequate statutory authorization for such programs. The ABA Model Procurement Code for State and Local Governments and accompanying suggested implementing regulations provide a basis for correcting this deficiency.

The duties of the purchasing function tend to focus on the acquisition process, such that this aspect of the work usually receives almost the entire attention given to cooperative purchasing. There are, however, numerous other ways purchasing offices and programs can cooperate beneficially, and this potential has scarcely been tapped. The possibilities for wider cooperation include not only exchanges of information regarding such things as specifications, product testing, and vendor performance, but joint seminars on all manner of purchasing subjects and joint training efforts that can include temporary exchanges of personnel.

There is information on many administrative and technical functions that different purchasing offices can share profitably: forms design, the preparation of manuals, product classification and coding, inspection techniques, and word processing and computer applications. Some states have already demonstrated the value of disposition of excess and surplus property by transfer to local jurisdictions.

Finally, it should be emphasized that many of these kinds of cooperation are needed between purchasing programs of the states as well as between states and their local governments.

FEDERAL GOVERNMENT PROCUREMENT

It is not the purpose of this chapter to provide an in-depth discussion on the purchasing procedures utilized by the federal government. Due to the magnitude and complexity of the federal systems it will be looked at only briefly. The discussion will focus on how state and local governments are affected by the federal procurement system and methods.

It is generally accepted that procurement conducted by the General Services Administration through its Federal Supply Service has great influence on state and local procurement. Relatively few of the awards made by the Federal Supply Service (FSS) are based on competitive sealed bids, but this presents no problems for state and local governments. The FSS is currently endeavoring to increase the number of procurements made through competitive sealed bids.

Most of the equipment and commodities purchased through the FSS, however, are acquired under what is known as a Multiple Awards procedure (Multiple Award Schedule) (MAS). This is a method used by the FSS to award to an unlimited number of vendors, through noncompetitive negotiation, the right to market their products to the governmental agencies. Agencies of the federal government are permitted to purchase commodities or services from a vendor holding a permissive contract under the Multiple Award Schedule (MAS). Multiple awards are used for a wide variety of commodities, including copiers, furniture, lamps, and hundreds of other items, that do not lend themselves to a single regional, national, or worldwide provider. While, occasionally, some state and local governments also make multiple awards, they differ from the federal practice by utilizing competitive sealed bidding and limiting the number of successful bidders to the minimum needed for a workable contract.

If a commodity or service is to be put on a FSS multiple award schedule, a general type of specification is provided to all interested manufacturers or firms, together with the terms and conditions that will govern the administration of the award. Price offered may be further negotiated by a contracting officer of the FSS. If a price can be agreed upon by FSS and the vendor, an award is issued. The award guarantees nothing more than providing a "license" for vendors to sell products to agencies of the federal government without further bids being required. The adverse impact of these multiple awards and their accompanying terms and conditions needs better understanding.

MOST FAVORED CUSTOMER/PRICE REDUCTION CLAUSE

As part of the FSS multiple award program, vendors are subject to what is known as the Most Favored Customer/Price Reduction Clause. Vendors desiring to be included on the multiple award schedule must provide to the appropriate contracting officer of the FSS the prices they have offered to other customers and the terms and conditions under which the sale(s) were made. While this discussion oversimplifies a complicated procedure, the purpose of the Most-Favored-Customer-Pricing Clause is to try to insure that the FSS does not pay a higher price for any commodity or service than any other purchaser. If the FSS finds that a lower price is offered to another company or government for the same commodity or service, the FSS requires that the difference paid be returned to the federal government on each and every order it has placed. This procedure, again simplified, is carried out under the Price Reduction Clause. The ultimate effect of this procedure is that vendors are unwilling to bid or, otherwise, offer a price to state and local governments that is lower than that listed on the multiple award schedule utilized by the federal government.

It has been the experience of state and local government purchasing officials that the Most Favored Customer/Price Reduction Clause is injurious to state and local governments by reducing competition and inflating procurement costs. Further, the net effect of the General Services Administration (FSS) Multiple Award Schedule policy is to inhibit free and open competition among potential contractors to state and local governments. This seriously undermines the purposes and benefits of competitive sealed bidding, and can be characterized as a de facto restraint of trade. Contractors should be able to furnish products to state and local governments at prices equal to or *lower* than those furnished to the federal government because of less cost of administering or servicing state and local contracts. The ability to offer lower prices to state and local governments stems also from the certainty of sales that result from competitive bidding awards. Other related factors include less required technical support, transportation, simplified invoicing, and collections.

Because of the intimidation of vendors, real or imagined, by the federal government, state and local entities are not offered the best possible pricing. It is not reasonable to expect that contractors will reduce their GSA MAS prices whenever they prepare a bid on a competitive single or limited award contract with a state or local government. Instead, the contractor will maintain its higher pricing levels even though it faces direct competition in a state or local procurement, where its costs will actually be much lower.

The National Association of State Purchasing Officials and the National Institute of Governmental Purchasing believe that prices bid to state and local governments should not be subject to Most-Favored-Customer pricing provisions. NASPO and local purchasing officials believe that the General Services Administration should not limit the ability of state and political subdivisions to operate as efficiently as possible. Between 1959 and 1982, state and local governments were officially exempt from the competitive restrictions of the Most-Favored-Customer/Price Reduction Clause. Unofficially, however, the fear of reprisal from the federal government has long had a strong *negative* effect on prices submitted to state and local governments.

There exists a great need for better cooperation at all levels of public procurement. One governmental jurisdiction should not have policies that impose a detrimental effect on other governments. Collectively, state and local governments have more purchasing power than the federal government, and if our common goal of providing efficient service to our taxpayers is to be realized, we must learn to cooperate at all levels of government.

OFFICE OF MANAGEMENT & BUDGET CIRCULAR A-102, Attachment O

Attachment O is a guideline establishing state and local government grantee procurement standards. Attachment O places maximum reliance on state and local government self-management of the procurement process. It allows grantees to use their own procurement procedures provided that the system for spending federal dollars conforms to Attachment O standards. In that most state and local governments' procurement policies are more restrictive than those established by Attachment O, problems should not be prevalent in spending grant funds.

It should be noted that the OMB Circular A-110, Attachment O is similar to the standards of A-102, but applies to institutions of higher education, hospitals, and other non-profit institutions. Readers should be alerted to the fact that the Office of Management and Budget of the federal government is in the process of issuing a new Attachment O.

Attachment O establishes standards and guidelines for the procurement of supplies, equipment, construction, and services with federal grant funds. The standards are established to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable federal law and Executive Orders. Attachment O further states that no additional requirements or subordinate regulations shall be imposed upon grantees by executive agencies unless specifically required by the Administrator of the Office of Federal Procurement Policy (OFPP).

It is not the purpose of this chapter to review all of the requirements of Attachment O. However, some of the most essential elements and conditions are:

- No protests shall be accepted by the federal grantor agency until all administrative remedies at the grantee level have been exhausted, and then only violations of federal law or regulations can be considered;

- Pre-award approval by the grantor agency of the grantee's contracts is required only if the procurement is expected to exceed $10,000 and is to be awarded *without* competition, or if only one bid is received in response to a solicitation;
- Grantees shall maintain a written code of conduct;
- Affirmative action steps must be taken to assure small and minority businesses are utilized, whenever possible, as sources of supply;
- All procurement transactions must be conducted in a manner that provides maximum open and free competition;
- Procurements under grants shall be made by one of the following methods: small purchase procedures, competitive sealed bids (formal advertising), competitive negotiation, non-competitive negotiation;
- The cost plus a percentage of cost and a percentage of construction cost method of contracting shall not be used;
- Grantees shall maintain records sufficient to detail the significant history of the procurement;
- Contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee.

All agencies who receive federal grant dollars must have a current copy of the OMB circular, which governs how the funds may be spent. Purchasing professionals should be especially sensitive to the procurement requirement contained in this document. Professional purchasing organizations should and do provide "alerts" to their members when federal regulations are proposed or enacted. Public purchasing professionals should react promptly to these "alerts" and take appropriate action to insure that the most efficient and effective procurement methods are available to them.

15. Professional Development

ESSENTIAL ELEMENTS

Recommended Statutory Coverage

The purchasing statute should:

Embody as part of the policy statement in the purchasing law an affirmation of the management role of public purchasing officials. (See also "Purchasing Structure, Policy, and Authority," Chapter 3.)

Provide a statement of intent encouraging professional competence, including training programs for purchasing staff, affiliation by purchasing officials and staff personnel with one or more professional purchasing associations, and professional certification.

Recommended Regulatory Coverage

Rules or regulations to implement the statute should:

Encourage standards that aid in the employment of personnel with training and purchasing experience.

Establish policies of recruiting personnel for central purchasing from purchasing staffs of using agencies.

Recommended Practices

The central purchasing authority should provide for specific funding in the agency budget for training and professional development, including formal course work, an updated departmental technical library, memberships in local, state, and/or national purchasing associations, and travel to observe other purchasing units.

Continuing management and administrative experience should be required of technical staff. For example, the staff should become members of committees and task forces (i.e., the purchasing representatives for such groups), exposed to researching and writing policy papers, and the preparation of budgets.

The central purchasing authority should support professional certification and encourage professional staff to qualify for appropriate certification.

Associations of public purchasers should lead the way in formalizing a body of requirements and an educational curriculum in the field of public purchasing.

Purchasing associations should encourage incorporating specifics of career education into suggested position specifications and educational standards for purchasing.

Public purchasers need to establish a common basis of purchasing theory to ensure that the principles and standards of good public purchasing are applied consistently with standards terminology, e.g., The Glossary, Appendix D.

Efforts to establish a single national certification program endorsed and supported by all private and public sector purchasing associations should be expanded and supported.

While statute and administrative law, policies, procedures, and organizational structure mesh to provide the mechanism for public purchasing, only people can make the mechanism function.

This chapter discusses the roles of people both in and out of the mainstream of state and local government purchasing who, in a variety of ways, affect and implement the procurement of goods and services. It is concerned primarily with proficiency on the part of state and local government purchasing personnel, and with orientation necessary for those who must support purchasing programs through executive, legislative, and management roles.

Discussions dealing with an effective level of performance, and the effort necessary to achieve and maintain the level, frequently bog down in semantics. There has long been discussion as to whether purchasing, private or public, is a profession, and there is persistent difficulty in arriving at agreement on the definition of "profession," "professionally," and "professional" as these words relate to levels of performance in public purchasing.

Whether or not public purchasing is a profession in the strictest sense of the term, public purchasers have the duty to act professionally; that is, to exhibit conduct in accordance with high technical and ethical standards.

There is little doubt that those charged with public purchasing responsibilities strive to maintain professionalism in their work in order to improve their competence, and in the process to gain recognition and status. In purchasing, as in other fields, there are values of pride and worth, there are standards and ideals, and there are specifics of conduct and performance. The ingredients of technical and ethical standards in public purchasing include an essential level of competent application of knowledge, a personal public discipline of performance, and the acceptance of responsibilities and accountability inherent in the authority and duties of the occupation.

THE ESSENTIAL LEVEL OF KNOWLEDGE

Educational Basics

Although from the historical point of view, formal curricula to prepare for the practice of purchasing in either the private or public sector have been limited, the importance of the work is becoming increasingly recognized as an educational subject. As one of 10 basic elements in its *Report to the Congress*, December 1972, the Commission on (federal) Governmental Procurement emphasized the need for education and training of purchasing personnel. Subsequently, the Federal Acquisition Institute (FAI) was established, and in August 1981 the Institute listed more than 275 accredited institutions of higher education in the United States which are providing procurement education programs and courses. The majority of these, by far, is directed to industrial and private sector purchasing, however, and the opportunity to pursue an educational discipline leading to a specific advanced degree in public purchasing remains almost non-existent.

Present generations of public purchasing agents have come to their careers often inadvertently and accidentally. They have been prepared educationally in a variety of ways, including many as licentiates in such formal professions as law, engineering, pharmacy, and other grounding in principles of economics, business, or public administration, but almost always without specific formal teaching of government procurement practice. The absence of an explicit discipline leading to a degree in public purchasing does not mean there is not opportunity to satisfy an educational background needed in public procurement. Training in the fields of economics, engineering, and business administration is particularly relevant. The present education of public purchasers, however, is a mosaic of happenstance. It is time, therefore, to recommend that the specifics of career education be incorporated into personnel position specifications and into educational standards which are or can be established by professional purchasing associations.

For the part-time public purchaser or for those who come to the field later in a career, there are resources for furthering one's formal training by a variety of courses, seminars, and institutes offered by colleges and universities. The orientation of much of this continuing education is towards industrial purchasing, but the government procurement officer can find substantial value in these opportunities.

Specific to public purchasing are the seminars offered by the National Institute of Governmental Purchasing. The NIGP seminar program has grown in sophistication in the past decade and offers a two-point sequence on Public Procurement Management as well as an introductory General Public Purchasing and a seminar for journeymen purchasers, public purchasing, and materials management. Other offerings targeted to special interests include Competitive Sealed Proposals/Competitive Negotiations, High Technology Acquisition, Standardization and Specification Writing, and Contracting for Services. Many NIGP seminars are sponsored by local organization, universities, or NIGP chapters.

The National Association of State Purchasing Officials has initiated the "Executive Trends Series" seminars on public policy issues for senior purchasing managers and executive and legislative decision makers.

The educational needs and requirements of public purchasers have changed as purchasing has evolved through several phases. The first period dates to the 1800s when statutes concentrated on contracts for construction and public works and were concerned largely with protecting taxpayers against favoritism and fraud. The purchaser of equipment, materials, and supplies was almost exclusively a technician involved in practices that demanded little educational preparation.

Shortly after World War I, the second stage, a movement to centralize purchasing began. The economic depression of the 1930s, accompanied by an urgency to get more value for the tax dollar, provided impetus in this direction. Centralization called for more highly developed operations, and greater need became apparent for a formal discipline of purchasing education.

A third phase began during and immediately following World War II. The magnitude and technological complexities, engendered by that conflict demanded a more knowledgeable procurement capability together with the exercise of new approaches, improved techniques, and higher expertise.

Purchasing is now in a fourth phase, with a growing emphasis on purchasing management.

The purchasing manager is beginning to play an increasingly active role in the executive decision-making process, as government management recognizes the value of contributions that can be made from purchasing experience. Yet, there are data and expertise that purchasing should provide to the decision-making process in much greater depth and detail than takes place at the present time. Decisions as to whether or not a project should acquire a given configuration of items, or the kind, amount, and degree of their capability, should not be made without taking into account the knowledge and expertise of purchasing professionals. Purchasing should serve also as a major adviser in various areas of feasibility studies, considerations of alternatives, and cost-benefit and cost-effectiveness analyses.

Continuing Education and Training

The role of educational advancement as an integral part of management relates both to formal education and to maintenance and improvement of the level of performance on an ongoing basis. There is no question that the experience of day-to-day operations contributes substantially to the growth of knowledge and expertise of a government purchasing office. Valuable as this experience is, however, it represents at best an unstructured form of education. There is need for formal training and instructional programs to supplement on-the-job knowledge and experience.

This requirement has not been met well by state and local purchasing. In 1982, state purchasing officials report that 12 states provide a special training for new employees but only five states have regular programs of in-house training for the entire technical staff. Twenty-four states indicate they rely upon others for continuing educational programs, and five states indicate they have no formal program at all. The results of a nation-wide survey of 1,047 counties and 545 cities show that only 9 percent of the counties and 13 percent of the cities have planned programs.

These statistics reveal a serious deficiency in the way purchasing programs perceive the imperative to raise their level of competence. While the surveys did not go into great detail as to the extent of continuing education provided by other than the purchasing activity itself, it appears much of it is through institutes and seminars offered by universities and colleges on an as-available basis, with little long-term program structure. These programs need to be shaped and formalized by a body of requirements which probably can best be expressed through professional associations of public purchasers. State and local governments, in turn, must provide funding for training and professional development, including activity memberships in professional groups, establishment of technical libraries, exchange visits with comparable purchasing activities, and formal course work.

Paraprofessional Development

Another aspect of professional development arises from the fact that while the recognized professional, a doctor for example, practices his profession, not all those in the field of medicine are doctors or professionals. Similarly, law clerks and legal secretaries are not considered professionals in the same sense as those for whom they work. Purchasing also requires divisions within the discipline. Those with suitable education, training, and experience occupy positions of authority and responsibility. Others in various staff and routine administrative positions, although working in the field of purchasing, cannot be said to be functioning as professionals. Nevertheless, the requirement for progressive training and education among this group is also important.

Uniformity of Principles and Standards

Professions are built around bodies of knowledge that have been reduced in one fashion or another to an accepted set of rules or principles and standards that are both formalized and uniform. They are used consistently by all professionals regardless of the time or place in which they may be practicing. Uniformity is especially important if the work is to be recognized as a unique discipline with consistent application under the same or like circumstances.

Public purchasing can be measured in this respect against the long-established professions because there is an extensive body of knowledge pertaining to the practice. However, there is little uniformity among the federal, state, city, county, and other governmental units in the application of this knowledge. This does not mean that public purchasing must become monolithic and have identical practices and procedures for every purchasing jurisdiction. Different jurisdictions have different problems. Flexibility in practice is necessary in public purchasing. There remains a need, nevertheless, for public purchasers to join in a concerted effort to establish an underlying commonalty that engenders consistency in the application of principles and standards. This publication is directed to the goal of identifying both the principles, which define objectives and purposes, and the standards as the means to accomplish them.

Professional associations of public purchasers are developing the necessary structure of uniform principles and standards. There are local, state, and national level associations which provide forums for public purchasers to expand the knowledge of public purchasing and to define personal and public disciplines of performance. Purchasing officials and their technical staffs should be encouraged to become active members of one or more such associations to broaden their professional insights and to contribute to the betterment of the profession.

CERTIFICATION

The need for identifying responsible purchasing performance among individuals who have attained a prescribed level of qualification has been evidenced by the fact that several public purchasing organizations, including the National Institute of Governmental Purchasing (NIGP), the National Contract Management Association (NCMA), and the National Association of Purchasing Managers (NAPM), developed programs of certification. The programs provided opportunities and requirements for purchasers to demonstrate their capability to meet criteria for knowledge and skills necessary in purchasing and related fields. Although the programs promoted the recognition of a candidate's professional competence in the field of purchasing, they had varying requirements for educational experience. Written and oral examination were usually conducted to supplement specified mixes of academic credits and experience. Most of the programs initially provided a limited period for the "grandfathering" of known experts.

In 1978, the National Institute of Governmental Purchasing was joined by the National Association of State Purchasing Officials in setting up a Universal Public Purchasing Certification Council and program. Subsequently, all of the major public purchasing organizations became associated with the program. The move was designed to more effectively promote and assure uniform professionalism in public purchasing. The program provided criteria and means for attaining two levels of professional competence. Affirmation as a Certified Public Purchasing Officer (CPPO) denotes an individual has attained a prescribed competence in the management and supervision of purchasing in governmental agencies, jurisdictions, and public institutions or authorities. Denomination as a Professional Public Buyer (PPB) signifies an individual is competent as a buyer in public purchasing.

Professional certification is an important part of job recruitment in many jurisdictions. According to the 1987 Procurement Research survey, Iowa, Maryland, Mississippi, Texas, and Utah place special emphasis on professional purchasing certification in job description or recruiting announcements. This is also the case with numerous city and county governments.

Scope of the Uniform Certification Programs for Public Purchasers

The Universal Public Purchasing Certification Council recognizes the public purchasing function is carried out by persons in all levels of government and in different types of organizational arrangements. The certification requirements, therefore, were established to meet the needs of all public entities - whether federal agencies with billion dollar annual procurement budgets, state agencies with multi-million dollar procurement outlays, or small municipalities with annual procurement expenditures in the thousands. Requirements for professionalism at any level of public purchasing activity are essentially the same.

Developments with respect to professional certification have moved nearer to a long-sought objective. Leading professional organizations have united to create a joint body to oversee and administer a single accreditation program. A Council on General Certification provided a procedure for testing the basic knowledge necessary for an individual to perform in a professional manner, whether the work is in the private or public sector, industrial, or governmental. The certification has been designated as a C.P.M., to represent a general certification in procurement and materials management.

INTERFACE WITH PURCHASING'S PUBLIC

The development of public purchasing has been accompanied by the characteristic tendency of practitioners to view their efforts in an aura of great specialization, if not outright mysticism. Abstruse and esoteric language, however, hinders good communication in government. Seeking status by this approach is not prudent or necessary. Government purchasers must communicate freely and lucidly with constituent agencies, prospective vendors, contractors, other professional groups, and the general public if the duties of public procurement are to be performed effectively.

Communication

Purchasing professionals need to communicate to the publics they serve, a clear understanding of the level of knowledge, the personal and public discipline, and the range of responsibility and accountability which the purchasing activity requires. This publication can be a basic means for promoting this communication.

Absorbed in the day-to-day tasks of procurement, public purchasing officials frequently neglect upward reporting. A town chairman, a mayor, a county board chairman, or a governor is receptive to reports of purchasing activity. It is a fascinating business, sometimes an amusing one, and a good story can do a great deal to establish understanding and appreciation of the efforts of a central purchasing authority.

This publication emphasizes the role of the purchasing official in government management. Participation often pays dividends to the public, as when a purchasing agent serves as a member of a building committee and can assist in necessary planning rather than become involved when the structure is nearly completed and has arrived at unrealistic or impossible deadlines for obtaining and installing equipment.

Public purchasers, alone and within their professional associations, must reach out to establish dialogues with other disciplines. Purchasing cannot be practiced in a void and close liaison with budgeting, accounting, and management information services inevitably improves purchasing performance.

Professionalism can be viewed as the hallmark carried by a profession, but that mark must be etched carefully as the profession builds. Public purchasing, in a unique way, is faced with a persistent challenge to inspire and merit public confidence. It recognizes that public confidence is earned by demonstrated performance of high quality and reliability. Public acceptance is reinforced by the central purchasing authority placing increased emphasis on accountability at all points within the procurement cycle.

THE PROCESS OF EVALUATION: PROGRAMS AND PEOPLE

Discussion of the roles of people both in and out of the mainstream of state and local government purchasing is of necessity somewhat abstract. There is, however, an opportunity inherent in the material presented in this publication to permit the evaluation of a public purchasing program, which also is a measure of professional development.

The exercise involves weighing actual performance against the essential elements identified in the text. While the evaluation may be largely subjective, an honest appraisal reveals a great deal about the state-of-the-art and the state of professional development. Repeating the exercise six to twelve months later could disclose a gratifying comparison.

Although purchasing started out primarily as a buying function, it clearly is no longer so limited in scope. The evolution of increasingly complex items that are subject to obsolescence in relatively short periods of time requires that public purchasing officials remain up-to-date in technical knowledge, related information systems, and new purchasing techniques. Also a successful program must have the flexibility to adjust to varied and changing market conditions where supply and demand for different commodities are, at times, relatively in balance and at other times quite unequal. The essential need for continuing professional development in the field of public purchasing is increasing with its growing responsibilities.

16. Manuals

The value of well-prepared purchasing manuals as the primary means of providing guidance and information continues to gain recognition. Most jurisdictions have developed a policy manual or an operations manual, and a substantial majority uses both.

Purchasing manuals typically take three forms: (1) a policy manual, which can include purchasing rules and regulations and administrative procedures. Many states have enacted statutory requirements for the formulation and publication of administrative policies and procedures by all departments and agencies. A policy manual is an effective way to meet this requirement; (2) an operations manual, or manual of internal practices and procedures; and (3) a vendor manual, which often takes the form of a booklet entitled "How the (State/City/etc.) of (_____) Buys," or "How to do Business with the (State/City/etc.) of (_____)."

Neither the initial preparation nor the subsequent upkeep of purchasing manuals is a simple task. An error of omission or ambiguity in the original document, or information which becomes outdated and incorrect may result in manuals that are worse than no direction at all. Both the policy manual and the operations manual should be in loose leaf format to simplify maintenance. The latter, obviously, is subject to more frequent change but law, policy, rules and regulations, and procedures are not static and the need for interpretive documentation changes as well. Microcomputers and desktop publishing software permit the central purchasing office to generate professional camera ready copy inhouse. All new material should be dated and indicate which pages are to be replaced.

The vendor manual usually is small enough for staple binding. There is the temptation to order a long press run for inherent savings, but again because of change, no more than a year's supply of manuals is a better buy.

This chapter will look briefly at coverage suitable for each of the three types, while keeping in mind the essential elements listed under preceding chapters.

Unfortunately, trial and error appears to be the usual method of learning that a single manual does not best serve the purposes of setting out policy, describing internal procedures, and imparting information to suppliers or potential suppliers. To help prevent further repetition of the experience, this discussion assumes a need for three separate manuals or equivalent sets of written instructive material.

POLICY MANUAL

Of the three, the policy manual is the most fundamental and critical. Its primary purpose is to set forth the provisions of the purchasing statute, the rules or regulations, and policies that are established to carry out these provisions. In doing so, it provides an overall description of the jurisdiction's purchasing program. Copies of this manual should be on the desk of each professional member in central purchasing and at hand in the administrative office of every department, institution, and agency, in the requisitioning office of each using agency, in the offices of legal advisers, and in appropriate institutional and public libraries, including the legislative library.

Each professional staff member of the central purchasing office has the responsibility to maintain a personal copy of the policy manual, as should each member of any policy board or other rule-making authority that exists.

The policy manual identifies and delineates the legal authority under which the purchasing program functions. The authority is usually translated into a specific set of duties and responsibilities for purchasers. The manual should discuss public purchasing principles and the goals of the program. This can be done effectively without getting into procedural details, which are better left to the operations or internal procedures manual. For example, the policy manual can explain the need for vendor evaluation and establish criteria for suspension or debarment, while the operations manual prescribes the steps to be followed, the forms to be used, and types of documentation required. Similarly, the policy manual can discuss the purpose and uses of bidders lists, with the operations manual detailing the procedures for adding suppliers and maintaining the lists.

Contents of the policy manual can be divided generally in much the same manner the essential elements are grouped in this publication, or in some other way the jurisdiction finds equally useful. In any case, the manual should have an introductory section explaining its purpose and rationale, and a section at the end for addenda and other material which may not lend itself to the main text. An organization chart of the central purchasing office and its place in the government structure and a table of contents are necessary ingredients.

Completeness is important. The surveys indicate that many state and local governments do not currently have statutes or rules that authorize either a number of things they should be doing or things they are in fact doing. Many of these deficiencies can be remedied by adoption of additional rules, regulations, or administrative procedures. The policy manual should identify all authority, statutory and administrative, to provide competent purchasing guidance and withstand legal challenges.

Laws and rules should be cited verbatim in the manual, including not only the purchasing statute itself, but portions of other laws of the jurisdiction which apply to public contracting, such as the price-fixing section of an anti-trust statute.

The policy manual should also discuss the purposes and objectives of the jurisdiction's purchasing program. This type of review speaks to the philosophy and to the results expected of the program, e.g., when low initial price is sufficient or further evaluation is needed in determining economy and the award of contracts. It should address attitudinal and cooperative relationships between the central purchasing office and the using agencies, professionalism and training endeavors, methods of purchasing and contracting, such as formal bidding, informal purchases, and term contracts, and the respective roles of central purchasing and using agencies in developing specifications and conducting inspections and tests.

OPERATIONS OR PROCEDURES MANUAL

An operations manual establishes and describes internal procedures. These should be set out in considerable detail, with the use of diagrams and flow charts where appropriate. The manual should be written for use by all personnel in the central office and in using agencies who are involved in the purchasing process.

Although the operations manual is prepared, issued and maintained, as are the policy and the vendor manuals, by the central purchasing office, internal procedures should also cover certain actions by using agencies, essentially those relating to requisitioning and receiving goods and services and ethical relationships with vendors. In depicting the requisitioning process, the procedures manual should set forth the circumstances under which, and the procedure to be followed, when a using agency should contact central purchasing for discussion, assistance, or other information prior to preparing a requisition for purchase. For some types of requirement, this communication should begin when a proposed need, such as a copying or data processing system, is only the gleam of an idea, or when planning the equipment for a new building or renovation is just getting underway.

Essentially, a procedures manual documents or prescribes all of the steps of the procurement process, from the origin of an acquisition concept to the final conclusion of a project or disposition of an item. This follows a natural sequence from use of a requisition form to a receiving report or a complaint-to-vendor form. Depending upon organizational duties, purchasing may or may not be concerned with approval and payment of invoices and other accounting functions. But the manual also must detail activities outside the straight-line flow of acquisition. For instance, the forms used and steps involved in establishing and maintaining bidders lists must be shown. The commodity classification system, the activities surrounding its upkeep, and the use of item codes in purchase documents and reports must be explained. The work of specification advisory committees and procedures involved in selecting them and acting upon their recommendations should be described. Some jurisdictions may want the manual to cover the duties and job descriptions of purchasing personnel.

After the policy manual has authorized the use of different types of purchase specifications and called for procedures for developing them, the operations manual should spell out steps to be followed in preparing and using each type. In establishing standard specifications and qualified products lists, for example, the procedures should require review of drafts by representative using agencies and bidders or manufacturers. Similarly, procedures for implementing requirements for cost and price analysis or for inspecting a supplier's plant should be noted.

Both the policy manual and the operations manual need to address the matter of conflict of interest and other ethical problems related to such things as: doing business with one's self or with those who can influence purchasing decisions, using the public purchasing power for private advantage, back door selling, and undue association with bidders or contractors.

The degree of detail in the operations manual is dictated by the nature of each topic, but any question should be resolved on the side of greater detail. Thus, in designating the content of purchase requisitions prepared by using agencies for central purchasing, both the requisition form itself and the procedures manual should specify all information to be furnished. Such detail can extend to a description of the justification for the purchase of each item requisitioned, etc. In addition, the manual needs to speak to other aspects of requisitions which may have to do with authorized signatures, approvals required, and certification of availability of funds.

It is characteristic of purchasing operations that the length of time involved in processing a purchase request is an ongoing matter of concern to both the requisitioner and the purchasing office. The effective use of computers with in-house or remote terminals can greatly facilitate the turn-around time for routine orders, for items available under existing orders, and especially for items available under existing term contracts. On requirements which involve the preparation of specifications and the receipt and evaluation of bids, however, the time can vary from one week to 60 or 90 days, depending upon the complexity of the purchase and perhaps the necessity for testing samples of products offered. In the case of requests for proposals, the time frame can be even longer if a complex evaluation methodology is employed. The policy manual should assign the central purchasing office the authority to determine lead times for submitting purchase requisitions, and the times that are needed for issuing solicitations and for receiving and evaluating responses. The procedures manual should contain a list of normal lead times for different types of requirements and different methods of purchase, and using agencies should be apprised with emphasis that the lead times must be taken into account in planning for the receipt of goods and services.

In addition to subject areas already discussed for inclusion in the operations manual, a listing of other items, though not intended to be complete, would include:

- Establishing and maintaining bidders lists, involving locating new sources of supply, vendor performance and evaluation, and determination of bidder responsibility pursuant to criteria prescribed in the policy manual.
- Review of Invitations for Bids and Requests for Proposals prior to issuance.
- Receipt, opening, and tabulation of bids and proposals.
- Responsiveness in bids and offers, including mistakes in bids both seeming and obvious.
- Handling of proprietary information, trade secrets.
- Circumstances under which all bids may be or are rejected, including collusive bidding and resolution of identical bids.
- Handling and return of samples.
- Handling, and return of, and need for, bid security.
- Notifications to bidders, successful and unsuccessful.
- Small purchase procedures.
- Contract administration, including expediting, enforcing provisions for price reductions, handling requests for price increases, and contractor adherence to contract terms and conditions.
- Handling protests of bidders and contractors and complaints from using agencies or the public.
- Transfer or other disposition of excess and surplus property.
- Review of purchase orders and recommendations for award, including dollar limits applicable to different levels of staff responsibility.
- Steps and procedures for carrying out different kinds of purchases, including a definite quantity purchase for a single agency, multiple-agency definite quantity scheduled purchases, indefinite quantity term contracts, emergency purchases, competitive negotiation, and noncompetitive negotiation (sole-source purchases).
- Documentation, records retention, and availability of records to other agencies and the public.
- Reporting anti-competitive practices and suspected collusion to appropriate legal authorities.
- Responsibilities of using agencies, including their suggesting local sources of supply, record-keeping, contract administration, in-house testing of products, reporting contractor performance, and reporting surplus property.

Certain other aspects of purchase and supply, such as receiving, inspection, and inventory management, must also be detailed in the operations manual unless, as some jurisdictions have found to be advantageous, they are covered by separate manuals written specifically for these subjects.

VENDOR MANUAL

The vendor manual should contain information pertinent to the concerns of both a prospective supplier who may be interested in bidding and a supplier who has bid successfully and received a contract. A tendency that is natural, perhaps, finds most vendor manuals directed almost exclusively to the prospective bidder. More coverage is usually needed in the form of information for a current contractor.

Instruction is the chief purpose of a vendor manual, but it should also offer some general information as to the background, organization, and overall philosophy of the jurisdictions's purchasing and contracting program. The manual should recognize the importance of the partnership and the proprieties that exist between the jurisdiction as purchaser and the vendor as seller, together with the obligations and courtesies that attend an open relationship.

Though the manual should be brief and concise, space should be allowed for an introductory statement. The introduction should be phrased in a friendly, informal way, setting the tone for the material to follow which also should be written in an easily readable, non-bureaucratic style. The introduction should include an invitation to visit or call the central purchasing office for further details or a more complete understanding of topics discussed in the manual.

Subjects covered can be arranged in a consecutive order beginning with the procedure for being included on the bidders list and proceeding to the obligations of a successful bidder to complete a contract and submit an invoice for payment. Not to be overlooked, however, is the need to include information concerning various statutory requirements and implementing rules, and a clear expression of policy governing the offering and receipt of gifts or gratuities of any kind. Also, a section of the manual should describe the sale of surplus property.

A general checklist of topics to be treated in the primary information and instructional portion of the manual would include:

- The kinds of goods and services purchased.
- The location and mailing address of the central purchasing office.
- The nature and structure of the bidders list and the forms of public notice given of the proposed purchases.
- The nature of basic statutory provisions, and of governing rules and policies, but not necessarily quotations or citations of statute or ordinance.
- Types of specifications used, including "brand name or equal" and qualified products lists, and any emphasis given to specifying performance characteristics.
- How purchases are made; for example, by competitive quotations, sealed bids, sealed proposals, two-step bidding, and under emergency and sole-source conditions.

- Procedures for submitting bids and proposals and holding public bid openings, including policy regarding late bids.
- How responsiveness of bids and responsibility of bidders are determined.
- Criteria for evaluating bids and proposals, including rejection in whole or in part.
- Any contractual terms and conditions customarily used that a prospective or a successful bidder will encounter.

The value of a vendor manual, both for informational and instructional purposes and as a medium for improving and maintaining public relations, is being recognized to the extent that more than three-quarters of the state and local governments report having developed such a publication. For jurisdictions which do not yet have a vendor manual, or which need to update or rewrite one, it would be helpful to review the products of their colleagues. Some of the manuals, in terms of format, including use of simple line drawings or other illustrations, language style, and content, are more effective than others. Examination of different vendor manuals also shows they can be small and concise without sacrificing their purpose.

17. Impediments to the Practice of Public Purchasing

As suggested earlier, a need for this kind of publication lies in events of national scope affecting substantially the conduct of purchasing by state and local governments - some favorably, some adversely. A number of those factors are identified in the *Overview* and discussed in various chapters, including impediments to price and product competition. The following are less cosmic in scope, but troublesome because they are hindrances - detractions and distractions - to the practice of public purchasing. Public purchasing officials need to be alert to these problems and prepared to cope with them.

Independence and Relationship of Contractors

There is a growing probability that contracting for professional or client services may incur conflicts of interest. These are relational, professional, or policy conflicts where parties may benefit improperly in ways difficult to ascertain or assess.

One of the more conventional conflicts of interest may be a relationship between the contractor and an employee of the jurisdiction. Direct financial gain by either party may not be an issue; advantages from being privy to confidential information by either or both parties may conflict with the interest of the jurisdiction.

Former employment with the jurisdiction of the contractor or employees of the contractor raises the spectre of possible conflict. Obviously, such a relationship could influence award of the contract. A more complicated scenario involves the departure of an employee at the top of a pay scale, only to be "hired" back at a higher rate as an "independent" contractor.

Other clients of a contractor may generate a climate of conflict. If a jurisdiction regulates or funds clients of a contractor, there may be professional or policy conflicts in the tri-party relationships.

To address these problems, a purchasing law should require purchasing to adopt rules or regulations to assure the selection of a contractor includes review for the independence and relationship, if any, of the contractor to an employee of the jurisdiction, disclosure of any former employment of the contractor or employees of the contractor with the jurisdiction, and a procedure to minimize the likelihood of selection of a contractor who provides, or is likely to provide, services to industries, client groups or individuals who are subject to regulation by the jurisdiction or the recipients of funding by the jurisdiction to a degree that the contractor's independence would be compromised. The purchasing office should have full discretion to take appropriate action based upon the review.

Liability

Privatization has been seen as an antidote to the "liability insurance crisis" which, at present, may be stabilized but not diminished. Literal privatization, i.e., the complete divestiture by a jurisdiction of the real and personal property, the employees, and all semblance of control of a government facility or program, may insulate the jurisdiction. As yet there is little case law in this area but, given the liberal judicial interpretation of subrogation in most liability cases, literal privatization may be leaky armor. But "privatization," of the kind where the jurisdiction may retain certain assets or employees and does retain control over policies and procedures (as in the purchase of services or the granting of franchises), there is no shedding of liability. "Hold harmless clauses" are not necessarily upheld by the courts.

More important, bringing in a third party by way of purchase of services, franchising, licensing, or other alternative deliveries of programs may increase a jurisdiction's exposure. A contractor may not be sufficiently sensitive to clients and their needs, may not be competent or may skimp because of financial considerations. "Adequate" liability insurance carried by the contractor only creates a second deep pocket; it does not zipper the pocket of the jurisdiction.

These exposures require analysis by the jurisdiction's risk management office or legal counsel, and careful assessment of bidders and proposers by the purchasing office.

Proprietary Information and Open Records Laws

Freedom of information is a well-established right. It can also be an impediment to public procurement unless the law of the jurisdiction recognizes and accommodates proprietary information.

As items purchased have become more complex, so has the nature of "trade secrets." Sources will be less inclined to do business with a jurisdiction that cannot preserve confidentially. For example, many government entities have laws requiring the disclosure to the purchasing agency of possibly toxic substances in products supplied. It is one thing to take precautions for the protections of employees; it is another to have to disclose, by demand under a Public Information Act, a manufacturing formula. Failure to be able to support appropriate confidentiality can reduce competition.

This same failure may become an impediment to innovation and ingenuity when the purchasing office is seeking creative responses to performance specifications. The successful proposal upon which a contract is based is public information. But what about the close second-place proposal - not quite what the jurisdiction needs but a potentially marketable original concept? It is not fair, nor ethical or prudent, to disclose information which may be salable in another situation. Such disclosure is not likely to encourage future creative responses from all potential sources.

Many Public Records Acts recognize and adequately protect information that can be demonstrated to be a "trade secret." Where such protection does not exist or is not clearly expressed, the purchasing official should urge necessary amendment and can count on suppliers for support.

Redefinition of Public Purchasing

Despite the trend toward centralized purchasing within the structure of a conventional unit of government, the growing procurement activities of independent entities and contractors suggest the need for a reinterpretation of public purchasing.

It may be argued that the earliest erosion of conventional public purchasing came with the creation of government authorities. The rationale for authorities may be creative funding, enlightened public policy, pure politics . . . whatever may occur to the legislative body of a state, county, or municipality in creating an authority. An authority is a government entity but not part of the conventional fabric of the jurisdiction. Authorities take on a life of their own, lives that may not be exactly what the creators intended. Not frequently, authorities handle procurement autonomously.

Akin to authorities are the various boards, commissions, and districts — entities which may straddle conventional political jurisdictions. Purveyors of diverse services, ranging from adult and vocational education to sewage treatment, may not be subject to public overview, particularly when board members, commissions, and district supervisors are appointed rather than elected.

Federal grants-in-aid require structured, open, and competitive procurement as directed by appropriate OMB Circulars. But as funds flow down, grants by states and local governments frequently run to citizen boards, particularly in the fields of aging and mental health. The conventions of public purchasing are not always observed by these entities in their procurement operations.

The acceleration of contracting for services formerly performed by government and the growth of privatization are having an even more marked affect on how public purchasing should be defined. Goods and services which had been procured through government purchasing are now being acquired by contractors and entrepreneurs. This purchasing and contracting procedure should be subject to the same high standards as those that apply to the public purchasing office.

The public, made up of many and diverse "publics" as the recipients of goods and services of government programs, tends to think in terms of limited end results; usually, either the same level of goods and services at a demonstrably lower cost, or demonstrably better goods and services at a higher cost. The public is not much concerned with the process of procurement as long as costs are managed, although if pushed (usually by a story in the media), the public will recognize that sound public procurement needs to be conducted with openness and competition. Generally, however, the public lacks information and the understanding to distinguish between conventional public purchasing and the procurement practices of entities out of the main stream. This should motivate purchasing officials to enlarge the definition and standards of public purchasing:

> "Public purchasing" ought to be defined as the process of procurement of goods and services *for the public*, i.e., procurement publicly funded and publicly utilized. The procurer of the goods and services may be federal, state, or local jurisdictions including authorities and public corporations, quasi-public bodies (boards, commissions, etc.), grantees, public contractors or entrepreneurs of some privatized facilities.
>
> The "public" are all those who, if now served by conventional government agencies, would have been, had not the decision been made to utilize an alternative publicly funded source of goods and services.
>
> "Publicly funded" includes not only tax-supported funding and governmental user fees, but also publicly generated funds collected to supplement, or supplant, governmental funding.

The requirement should be kept simple: open purchasing records and varying dollar-related competitive standards. How and how well these requirements are met becomes part of ongoing contract administration. Potential contractors have the option of accepting these standards or not participating in the public programs. They are free to remain "private" and offer their goods and services in a one-to-one relationship with individuals as contrasted to the identified "public." Depending upon the intent and degree of divestiture, some privatized facilities are completely reverted to the private sector and independent of government. These may offer their goods or services on the same basis.

These redefinitions have both dissidents and supporters. Among the dissidents will be public purchasers who believe that contracting out somehow relieves them of responsibility and accountability and who do not want an ongoing relationship with contractors. It may take a little while . . . and a traumatic experience . . . for them to realize that they have not shed their responsibility and accountability but stretched them. The contractor's standards ought to be the government's standards.

Non-Appropriation Clause

The non-appropriation clause is intended to relieve the jurisdiction of contractual obligations if funding in subsequent fiscal periods is unavailable. The non-appropriation clause is also a device for "getting out of" a contract which, for a variety of reasons, has become an embarrassment to the jurisdiction. This is an unprofessional . . . even unethical . . . option, but one that has been employed. In either event, the contract price reflects built-in protection against the possibility (or, worse case, the probability) of the clause being invoked.

The first fiction of unavailability of funds is that future funding will not be approved. How often is the non-appropriation clause invoked? Is the jurisdiction continuing to pay a premium against miniscule odds?

The second fiction, even in the face of the fiscal stress being felt by all governments, is the absolute unavailability of funds. It is one thing to try to demonstrate non-appropriation in a line-item budget. It is much more difficult to address it in program budgeting, particularly when there is evidence of an essentially similar program or function. And in either line-item or program budgeting, as long as an agency or department continues to be funded (without regard for the status of a given function or program), a contractor has a strong argument against termination.

Attempting to invoke the non-appropriation clause may increase rather than avoid costs for the jurisdiction because of an erosion of sovereign immunity. The days when government could say "you may not sue" or "just try and sue" have been longer than many public purchasers realize. More and more the courts treat governments as corporate persons with responsibilities and obligations under commercial law. And the courts have tender sensibilities when it comes to the sanctity of contracts.

Aside from the legal challenges to the non-appropriation clause, governments defined by the courts as corporate persons have the responsibility (a matter of collective conscience?) to honor fully all contractual obligations. Certainly, unilateral termination without penalty is not equitable.

The non-appropriation clause is an impediment to a cost effective strategy, multi-year contracting. Either the public purchaser has been unwilling to challenge what is perceived as disapproval, if not prohibition, of that strategy, or potential contractors have been reluctant to enter into longer term contracts under the shadow of the non-appropriation clause.

Both public purchasers and contractors seem to have no difficulty with a one-year contract that bridges two budget cycles even when that contract has the non-appropriation clause. It is with even less logic that the public purchaser employs a one-year renewal but will not accept the concept of a three-year contract. (The contractor has no problem with a 1 + 1 + 1 contractual arrangement if, with conventional wisdom, he is able to recover start-up costs, and a little margin as well, in the first year.)

Multi-year contracting cannot be used for every procurement transaction. But where appropriate, there are such substantial advantages, both to the jurisdiction and the contractor, that perceived impediments, such as the non-appropriation clause, should be removed. The advantages to government include lower costs and less churning. Less churning leads to service continuity, reproduced overhead in solicitations and contract administration, and better time management by purchasing professionals.

Since the non-appropriation clause is a matter of statute or ordinance law in most jurisdictions, change is at the discretion of the legislative body. Interest in effecting change does not enjoy high priority — it may have stiff opposition. Public procurement officials must provide reason and logic . . . and assurances.

Certain established policies — demonstrable stipulations — must give this concept political and economic viability:

- Recognize that goods and services subject to volatile markets are not suitable for multi-term contracts.
- Demonstrate actual cost savings — intangibles like improved service cannot be quantified.
- Consider intensity or lack of competition as a factor in the decision on multi-year contracting.
- Provide for a statutory cap on the length of any sole source multi-year contract.
- Demonstrate the ability for contract administration by the using agency monitored by the purchasing office.
- Provide for a structured process for the resolution of contractual disputes and a structured negotiation or arbitration process for termination at the convenience of either party. These safeguards prevent abuses of the multi-year contract option and reassure executive and legislative management, thus removing obstacles to repeal the requirement for a non-appropriation clause that is no longer appropriate.

Lack of Clear Statutory Mandate

A good purchasing statute or ordinance is one that clearly expresses legislative intent without unduly restricting the appropriate discretion of the purchasing official. Unfortunately, many purchasing laws that met these criteria when enacted are now deficient in either or both.

A legislative body passing a procurement act as late as the 1950's could not express intent for the acquisition of high tech hardware or the purchase of ministerial services because both were beyond their ken. And procedures and processes laid out in legislation of that date may not be appropriate to current complex markets.

For many years the concept of liberal interpretation of statute law provided an accommodation for changes in what was bought and how it was purchased. At times, the interpretation had to be imaginative, but it was seldom challenged. The principle of liberal interpretation has largely been replaced by the principle of literal, "four corners", interpretation, i.e., to be legal, any act must be authorized within the statute or ordinance law. The courts do not look for what might be, only for what is.

Some purchasing programs perpetuate the legal fictions created in an era of liberal interpretation. Eventually, probably sooner than later, these will be challenged to the embarrassment of the jurisdiction.

Another impediment is the inability of the jurisdiction to employ certain purchasing strategies because the purchasing law is mute. For example, competitive negotiation per se is not usually provided for in purchasing laws.

The purchasing official is strongly encouraged to compare the jurisdiction's purchasing law to the "essential elements" which this publication designates as needing to be addressed in statute or ordinance law and implementing regulations. Additions, amendments, and revisions of the purchasing law should enjoy a high priority.

Questions of Constitutionality

At least two questions of constitutionality that involve public purchasing practices have not been addressed by the courts in any decision which makes for clear case law.

Some legal scholars believe that in-state preference laws and similar legislation is prohibited under the commerce clause. But, after decades, these practices have yet to be clearly challenged on this issue.

A more recent trend may be challenged with more dispatch. The privatization of prisons raises a question of encroachment upon the judicial branch by the executive and legislative branches. It remains to be seen whether the courts will look upon the prison system as a ministerial function of government that may not be delegated.

Copyright

Many jurisdictions, including the Federal government, have a policy which holds that work, otherwise copyrightable, should be in the public domain on the rationale that the work was financed by public funds. This is an understandable position, but one that is subject to abuse or misuse.

For example, a jurisdiction contracts for a management study. Without copyright protection for the jurisdiction, the management consultant can repackage the study, including unique and ingenious solutions, and offer it to subsequent clients...and the original jurisdiction which paid for the study does not share in the profits from the repackaging.

As another example: failing to copyright a work and without any specific written contractual provisions to the contrary, a jurisdiction may find that the "author" of the work will copyright it and benefit accordingly. A contract programmer could do this with software developed for a jurisdiction.

The 1978 revision of the Federal copyright laws provides that, without a valid assignment or sale of these rights, the author is the owner of the copyright. Prior to 1978, the commissioning party was the copyright owner, but now, unless the law is carefully observed, the ownership may be in doubt.

The first step is the drafting of a written contract specifying that the work is a work made for hire. As a written work to be copyrighted, the work-for-hire must fall into the category of a supplementary work, a compilation, an instructional text, a translation, an atlas, or a contribution to a collective work. In contracting for services, these requirement should be specified in the IFB or RFP as well as by contractual clause.

Two federal court decisions address copyright protection of software: Whelan v. Jaslow and Broderbund v. Unison World. Whelan wrote a dental lab finance program running on IBM minicomputers under contract to Jaslow. When Jaslow wrote a similar program in Basic language for microcomputers, Whelan sued. While the Jaslow program was not a transliteration, the court found "substantial similarity." The court found the same in that Unison's program was substantially similar to *Print Shop*.

Ideas may not be copyrighted . . . expression of those ideas can be.

The jurisdiction also has to be concerned about copyright infringement. Just as there are solicitation and contract clauses calling for protection of the jurisdiction against any patent infringement, there should be a clause covering infringement protection in regard to intellectual, i.e., copyrighted, property.

Employee-Employer Relationships

Garcia v. San Antonio Metropolitan Transit Authority should contribute greatly to a jurisdiction's concern for maintaining an arms-length relationship with any personal services contractor. In this case, Garcia was employed, on a contractual basis, by the San Antonio Metropolitan Transit Authority, and the courts found that the minimum wage and overtime pay provisions of the Fair Labor Standards Act (FLSA) apply to the public mass transit employees of SAMTA. The Court expressly overruled its earlier decision in *National League of Cities* vs. *Usery* that the minimum wage and overtime pay provisions of FLSA could not constitutionally be applied to state and local government employees who are engaged in traditional government functions. The court found that a personal services contractor might not observe a forty hour work week, and if there is a subsequent finding that the individual performed as an employee, rather than an independent contractor, the jurisdiction may have substantial liability for overtime.

And Historical Impediments

Some impediments to effective public purchasing, it seems, have always been with us. The reader can draw from experience in fleshing out, among others, the following:

- History, the burdens of past practices — "This is the way we have always done it." — the barrier to innovation and ingenuity.
- Politics, with both a capital and lower case "p".
- Market dimunition — both the Sears Syndrome, where the supplier is held captive by a purchaser who consumes the vast majority of the supplier's production and, worse, the Hostage Syndrome, where the jurisdiction is held captive through real or forced shortages due to a lack of competition or product availability.
- Process v. Results — the insistence of a supplier to "do it the government way" rather than being results oriented.
- Media Stereotyping/Public Perception — it is time to recall the observation of John Kenneth Galbraith: "Modesty is a highly overrated virtue!" If the public purchasing community does not work to dispel these stereotypes, no one will!

State Government Procurement
A Summary of State Policy

The following tables represent a summary of information obtained through an extensive survey of the state procurement office. A survey was mailed to each member of the National Association of State Purchasing Officials and a 100 percent response was received. Many of the questions posed were lengthy and detailed in order to insure accurate interpretation of their meaning. Those questions were shortened to simplify the readers use of the tables but they are attached in their entirety to the respective table they address.

Table 1. Centralization of Procurement Authority

(1) Does the State have a central purchasing office which buys or contracts for the requirements of most or all state agencies?

(2) Are purchase orders (or releases under contracts) to vendors issued primarily by the user agencies or by the central purchasing offices?

(3) Are any agencies exempt by law from purchasing through the central purchasing office, or otherwise authorized to buy most of their requirements?

(4) If yes please list those agencies.

TABLE 1

STATE	Central Purchasing Office	Purchase Order Issuer	Agencies Exempt By Law From Central Purchasing	Agencies Exempt By Law
ALABAMA	Y	PO	Y	Mental Health; State Docks; Youth Services
ALASKA	Y	A	Y	University; Legislature, Court System, Construction, State Equipment Fleet
ARIZONA	Y	A	Y	State Compensation Fund; Transportation design and highway construction; Universities; Legislature; and Judicial
ARKANSAS	Y	A	Y	Colleges and universities; Highway dept.; Constitutional offices
CALIFORNIA	Y	A	Y	University of California; California State Universities if less than $100,000.
COLORADO	T	PO	Y	Division of Purchasing issues mandatory contracts for all agencies
CONNECTICUT	Y	A	Y	Legislature; Judicial Branches
DELAWARE	Y	A	Y	State institutions and education; only Executive Branch must go through central purchasing
FLORIDA	Y	A	Y	Legislative; Judicial and State University System, Dept. of State Lottery
GEORGIA	Y	A	Y	Legislatures and State Courts
HAWAII	Y	A	Y	Not mandatory for any agency to buy through Central Purchasing. (They do use price lists issued by central purchasing.)
IDAHO	Y	PO	Y	Elected Officials; University of Idaho
ILLINOIS	Y	PO	Y	State colleges and universities
INDIANA	Y	PO	Y	Judicial and Legislative Branches; Universities; Commission on Higher Education; Dept. of Highways; there agencies may go through the central purchasing if they desire.
IOWA	Y	PO	Y	Department of Transportation; Board of Regents
KANSAS	Y	A	Y	Legislatures
KENTUCKY	Y	A	Y	Issues major delegations of authority to Transportation; Universities exempt from Central Purchasing Office.
LOUISIANA	Y	PO	Y	Education (Uses state contracts when applicable.)
MAINE	Y	PO	Y	University system; Legislature; Court system
MARYLAND	Y	PO	Y	University of Maryland (except capital funded); Judicial and Legislative Branches
MASSACHUSETTS	Y	PO	Y	Port, Turnpike, Bay Transportation Authorities; Legislature; Military
MICHIGAN	Y	PO (Contract Rel-A)	Y	Liquor-Control Commission (Liquor Only), State Lottery (ADP Equipment Only), Auditor General, Legislative and Judicial Branches
MINNESOTA	Y	A	Y	University of Minnesota; Legislature, Zoological society, Historical Society
MISSISSIPPI	N	A		
MISSOURI	Y	PO	Y	Highway Dept. (except outside printing), Judicial branch and legislature; University of Missouri, Lincoln University, Northeast Missouri State University
MONTANA	Y(a)	PO	N (b)	
NEBRASKA	Y	PO	Y	University
NEVADA	Y	PO	Y	Legislature and Supreme Court
NEW HAMPSHIRE	Y	PO	Y	Legislative Branch, Court System, University System, Liquor (Alcoholic beverages only), State Reporter, Dept. of Resources and Economic Development (items for resale only)
NEW JERSEY	Y	A	Y	Judicial and legislative branches; Quasi-state agencies; State Colleges

TABLE 1 (Continued)

STATE	Central Purchasing Office	Purchase Order Issuer	Agencies Exempt By Law From Central Purchasing	Agencies Exempt By Law
NEW MEXICO	Y	PO	Y	Procurement of professional services (all), Procurement of highway construction or re-construction by State Highway Dept., Judicial Branch of State Government, Legislative Branch, Educational institutions, Procurement of information processing resources through the Information Systems Council, State Fair Commission, Local Public Bodies
NEW YORK	Y	A	Y	Legislature; Pubic benefit corporations; Authorities; Commissions; State University System
NORTH CAROLINA	Y	A	N	
NORTH DAKOTA	Y	A	Y	Institutions of higher education, the judicial and legislative branches
OHIO	Y	PO	Y	Adjutant General's Office; General Assembly; Institutions operated by Board of Trustees; Colleges and universities; Transportation (State contracts may be used by these agencies at their discretion.)
OKLAHOMA	Y	PO	Y	University system; Legislature
OREGON	Y	A	Y	Legislative assembly, State courts, Secretary of State, State Treasury, Oregon State Lottery
PENNSYLVANIA	Y	PO	Y	Legislature; State Systems of Higher Education; Universities
RHODE ISLAND	Y	PO	Y	Port Authority; Public Transit Authority; State Lottery; Legislative Branch; Public Building Authority
SOUTH CAROLINA	Y	A	Y	Ports Authority; Railway Commission; Public Service Authority; Legislature; Highway Department—Roads and Bridges; Research Authority
SOUTH DAKOTA	Y	PO	Y	(State Cement Plant)
TENNESSEE	Y	PO	Y	Universities and colleges; Legislature; Technical Institutes (Exception to the exemption: when the purchasing division executes term contracts for an amount less than the commodities can be bought by the above group.)
TEXAS	Y	PO	N	Legislature, University purchases of research equipment, and the Texas National Research Laboratory Commission
UTAH	Y	PO (Contract Rel-A)	Y	Legislature, Higher Education, Correctional Industries
VERMONT	Y	PO	N	
VIRGINIA	Y	A	Y	Highways and Transportation; Alcohol Beverage Control Board (Exemptions do not include purchases of office and janitorial materials or heating fuels.)
WASHINGTON	Y	PO	Y	Legislature; Higher education; Data Processing Authority
WEST VIRGINIA	Y	PO	Y	Board of Regents, Construction Division, (Highways), Legislature, Supreme Court
WISCONSIN	Y	A	Y	Legislature and Judicial Branches
WYOMING	Y	PO	Y	Highways; Universities; Legislature and Judicial branches

KEY: Y = Yes; N = No; PO = Purchasing Office; A = Agency

(a) Central Purchasing buys all RTS items and items above dollar amounts delegated to agencies.

(b) Agencies are delegated specific dollar amounts only - $2,000, $5,000, $10,000, and $25,000.

SOURCE: November 1987 Survey by The Council of State Governments for the National Association of State Purchasing Officials.

Table 1A. Legal Basis for Procurement Centralization

(5) Does central purchasing have or is it actively developing a computerized "Purchasing Management Information System;" that is the use of ADP data for planning, scheduling, and helping make management decisions?

(6) Is there a trend toward centralization in your state of policy matters governing purchasing and contracting?

(7) Does central purchasing have a written protest and appeals procedure for services vs. commodities?

(8) Does central purchasing determine whether items are to be traded in, transferred to other agencies or sold?

TABLE 1A.

STATE	Legal basis for computerized "Purchasing Management Information System	Legal basis for centralization of Policy Matters Governing Purchasing and Contracting	Legal basis for written protests and appeals procedure for services and commodities	Legal basis for determining whether items are sold, traded or transferred in
ALABAMA	OP	OP	R	N
ALASKA	N	S	S	OP
ARIZONA	OP	S	S	OP
ARKANSAS	OP	S	S	S
CALIFORNIA	OP	S	S/R	S
COLORADO	OP	S/R	S/R	S
CONNECTICUT	OP	OP	S	S
DELAWARE	OP	S/OP	S	N
FLORIDA	S/O	R	S/R	N
GEORGIA	NA	R	R	N
HAWAII	N	OP	N	N
IDAHO	OP	NA	S/R	S
ILLINOIS	OP	S	R/OP	N
INDIANA	N	OP	N	N
IOWA	OP	S	S/R	S/R
KANSAS	N	N	N	S
KENTUCKY	N	R/OP	S/R	R
LOUISIANA	OP	S	S	S
MAINE	OP	OP	S/RS/R	
MARYLAND	OP	S/R	S/R	N
MASSACHUSETTS	OP	OP	OP	R
MICHIGAN	OP	S/OP	N	OP
MINNESOTA	OP	OP	N	S/OP*
MISSISSIPPI	NA	NA	N	NA
MISSOURI	OP	OP	N	S
MONTANA	OP	N	OP	S/R/OP
NEBRASKA	OP	OP	N	N
NEVADA	OP	S	S	S
NEW HAMPSHIRE	N	N	N	S
NEW JERSEY	R	S/OP	OP	S
NEW MEXICO	OP	NA	OP	NA
NEW YORK	NA	S	N	N
NORTH CAROLINA	OP	NA	R	N
NORTH DAKOTA	N	OP	R	S
OHIO	OP	NA	N	N
OKLAHOMA	OP	S	R	S
OREGON	OP	OP	R	S/R/OP
PENNSYLVANIA	OP	N	N	N
RHODE ISLAND	N	S	R	N
SOUTH CAROLINA	OP	N	S	S
SOUTH DAKOTA	OP	N	N	R
TENNESSEE	NA	S	S	S
TEXAS	OP	NA	OP	OP
UTAH	OP	S	S	OP
VERMONT	OP	OP	N	S
VIRGINIA	OP	S	S	N
WASHINGTON	OP	S	R	S
WEST VIRGINIA	N	N	N	S
WISCONSIN	OP	OP	OP	OP
WYOMING	N	S	N	S

KEY: S = Statute; R = Rule or Regulation; OP = Operating Procedure); N = NO; NA = Not Applicable; * = Material Management
SOURCE: November 1987 Survey by The Council of State Governments for the National Association of State Purchasing Officials.

Table 1B. Possible Compliance Actions by Central Procurements

(9) What corrective actions can be taken when a using agency fails to order in accordance with, or otherwise fails to comply with, a contract made by central purchasing office?

TABLE 1B

STATE	Corrective Actions Required When Using Agency Fails to Order in Accordance With Contract Made by Central Purchasing Agency
ALABAMA	All of the normal housekeeping corrective actions can be taken and if the vendor collaborates, disciplinary action can be taken against him.
ALASKA	Retract purchase authority; refuse to allow payment; disciplinary action against the responsible individual.
ARIZONA	Written notification to management; loss of purchasing authority; personal liability.
ARKANSAS	Purchasing authority may be taken away from using agency resulting in every purchase being initiated from central office.
CALIFORNIA	If an agency purchases an item off contract, the person responsible is liable for payment of any extra cost. Delegated purchasing authority may be rescinded.
COLORADO	Department head and the employee actually making purchase may be held personally liable for the costs.
CONNECTICUT	Removal of all purchasing authority for a given period of time. Holding the fiscal head of the agency responsible for payment of illegal or unauthorized purchases (this may be recovered in court action). Section 4-115, C.G.S.
DELAWARE	None. The Division of Purchasing has no authority for enforcement since use of our contracts is not mandatory except for the Executive Branch.
FLORIDA	287.042(8) states the Comptroller shall not approve any account nor direct any payment for the purchase of any commodity except as authorized by the Division.
GEORGIA	Removal of field authority to purchase; State auditor will cite the closing audit and may disallow the purchase thereby requiring return of the goods or personal payment by the offending employee; Request to agency for discharge or appropriate discipline of employee. All year-end audits are provided to members of the General Assembly—Committees investigate as a matter of course.
HAWAII	Withhold payment to vendor, reprimand agency.
IDAHO	Purchasing authority may be reduced or taken away.
ILLINOIS	Procurement Services would notify the appropriate officers of the agency and that person would be subject to appropriate discipline. Recind delegation of purchasing authority.
INDIANA	The central purchasing office reviews and approves all purchasing done by the agencies and institutions before payment is made. An improper purchase can be rejected leaving the agencies liable for payment. This process and the agencies' awareness of the possibility of rejection keeps the agencies in line with proper purchasing procedures.
IOWA	Charge the responsible individual; remove the abused privilege from the agency.
KANSAS	In all cases of non-compliance, the agency is notified by the Director of Purchases or the Director of the Division of Accounts and Reports who issues warrants for all agency payments, and compliance is requested. When flagrant non-compliance exists, the Division of Accounts and Reports will reject agency payment vouchers. The agency then is forced to apply to the Legislative Claims and Accounts Committee with an explanation of its actions and a request for authority to pay the outstanding account(s).
KENTUCKY	Administrative action; personal liability; restriction of further purchasing; reprimand.
LOUISIANA	Publicity; Administrative pressure; Alteration or Reduction of Delegated Authority. A legal penalty exists in the Louisiana Procurement Code for failure to follow the Code.
MAINE	Note of reprimand; Department head can be made to pay for unauthorized purchases within his/her department by statute.
MARYLAND	Rescind delegated purchase authority from the offending agency and require them to requisition through the central purchasing office.
MASSACHUSETTS	Report it to the proper authority in the agency. If this fails to remedy the situation, report the matter to the Office of Administration and Finance.
MICHIGAN	For not securing goods and/or services covered by contract, inappropriate purchases will not be authorized for payment. Department or agency can return material to vendor, require staff person to cover expense and either take items home or donate to state. Violation of emergency purchases results in letter of disapproval, repeated violations cause for removal of all delegated purchasing authority.
MINNESOTA	Delegation of authority may be rescinded.
MISSISSIPPI	Payment is refused; merchandise is returned and proper procedures are followed.
MISSOURI	Rescind authority—Department Directors could be held responsible for payment by statute.

TABLE 1B (Continued)

STATE	Corrective Actions Required When Using Agency Fails to Order in Accordance With Contract Made by Central Purchasing Agency
MONTANA	Written notification of lack of compliance may be directed to the Agency. The Agency may be required to provide written documentation explaining the reason for the violation. Referred to Legislative Auditor's Office.
NEBRASKA	Purchasing can notify accounting not to issue vouchers.
NEVADA	The head of the using agency and the employee who actually made such purchase or entered into such contract shall be personally liable for the costs of any supplies, materials or equipment delivered pursuant to such purchase or contract.
NEW HAMPSHIRE	Any agency or person making purchases outside of established procedures may face the possibility of personal payment. Letter of warning from Director and/or Commissioner. Director requires a letter from the offender.
NEW JERSEY	Non-compliance by using agencies is brought to the attention of that particular agency's head for appropriate action. Central purchasing has no legal authority over employees of a particular agency. If a case involves corruption or fraud, the matter is brought to the attention of the Office of Attorney General.
NEW MEXICO	Payment is delayed until user is able to justify the purchase or the product is returned.
NEW YORK	If ordering outside the contract, the State Comptroller's Office can reject the agency's purchase order and instruct that the order should instead be placed against the contract. If an agency fails to meet contractual obligation to order, action can be withheld on their request for future purchases. If it appears illegal acts have been committed, appropriate authorities will be notified.
NORTH CAROLINA	Executive officer of department is personally liable for the costs thereof.
NORTH DAKOTA	The Office of Management and Budget reviews and authorizes all vouchers for payment. Agencies failing to comply are contacted at that time. Payment may be interrupted.
OHIO	They are advised in writing of appropriate procedure. The system is such that institutions and/or agencies are very cautious of such errors.
OKLAHOMA	Contact agency. Director and vendor who sold merchandise are held responsible.
OREGON	Review abuse with violating agency. Submit written report of review to agency's top management and, if warranted, to state auditor.
PENNSYLVANIA	The only recourse at this time would be disciplinary action.
RHODE ISLAND	Contractual matters are the responsibility of the central purchasing office and reflect the commitment in behalf of the using agency. Administrative actions to settle any discrepancies between the agency and the contracting office may result in enforcement, modification or termination of contract as may be in the best interest of the state.
SOUTH CAROLINA	A letter is dispatched to the agency director with a copy to the governing board of the agency (titled the Budget and Control Board). The agency is also subject to law suit by the successful contractor for loss of profit under contract. Reduction in certification and purchasing authority by Division of General Services.
SOUTH DAKOTA	Agency head is notified; purchasing authority can be withheld.
TENNESSEE	Agency personnel responsible for the abuse can be held accountable and personally liable; state auditor may intervene and take disciplinary action be taken by employee's appointing authority. Removal of agency purchase authority.
TEXAS	Warning letter to the agency, action recorded as non-compliant. Agency record of compliance is periodically reviewed for consideration or removal of continuation of delegation. An improper action may also result in refusal to approve payment an the voucher. If willful intent is apparent, disciplinary or legal action may be taken.
UTAH	Payment can be refused. Disciplinary action with the employee taken.
VERMONT	Written notice to management.
VIRGINIA	Withdrawal of whatever purchasing authority they have been delegated; report problem to Governor's Office.
WASHINGTON	Letter of reprimand to agency management with carbon copy to States Auditor. Review/Rescind violating agency's delegated purchase authority.
WEST VIRGINIA	Payment for the items may not be approved; however, if file is well documented as to how incident occurred, remedies are available.
WISCONSIN	Revocation of delegation.
WYOMING	Letters of reprimand from purchasing and/or Governor. Refusal to honor contract.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 1C. Responsible Central Procurement Official

(10) Please list the title of official with statutory responsibility for central purchasing (e.g., Director of Administration).

(11) Please list the title of person responsible for daily operation of the central purchasing office (e.g., State Purchasing Official).

(12) Name the body or title of individual who prescribes purchasing rules and regulations (e.g., Board of Public Affairs; Commissioner of General Services).

TABLE 1C

STATE	Central Purchasing	Daily Operations	Legal Policies
ALABAMA	Director of Purchasing	State Purchasing Agent(S)	Director of Finance (S)
ALASKA	Commissioner of Administration	Director of General Services & Supply (S)	Commissioner of Administration (S)
ARIZONA	Director of Administration	State Purchasing Administrator (R)	Director, Department of Administration (S)
ARKANSAS	Director of Finance & Admin.	Director of Office of State Purchasing (S)	Director of Office of State Purchasing (S)
CALIFORNIA	Director of General Services	Deputy Director, Procurement Division (S)	Director of General Services (S)
COLORADO	Executive Director, Dept. of Administration	State Purchasing Director	Director, Department of Administration (S)
CONNECTICUT	Commissioner of Administrative Services	Deputy Commissioner of Purchases (OP)	Commissioner of Administrative Services (S/R)
DELAWARE	Secretary of Admin Services	Dir., Division of Purchases (S)	Sec. of Administrative Services
FLORIDA	Executive Dir., Dept. of Gen. Services	Dir., Division of Purchasing	Board of Dept. of General Services
GEORGIA	Commissioner of Admin. Svs.	Director of Purchasing	Director of Purchasing
HAWAII	State comptroller	Chief, Pur. & Supply Division (OP)	Governor (S)
IDAHO	Director, Dept. of Admin.	Admin., Division of Purchasing (S)	Admin., Division of Purchasing (S)
ILLINOIS	Dir., Dept. of Central Mangmt. Svs.	Manager, Procurement Services Division (OP) Contract Admin., Contract Admin. (OP) Superintendent, Printing Section (OP)	Dir., Dept. of Central Mangmt. Services (S)
INDIANA	Commissioner of Admin.	Dir. of Procurement Division	Com., Dept. of Administration
IOWA	Director of General Services	Admin., Div. of Purchasing (OP)	Director of General Services (S)
KANSAS	Director of Purchases	Director of Purchases	Sec., Dept. of Administration
KENTUCKY	Secretary of Finance	Director of Purchases	Secretary, Dept. of Finance
LOUISIANA	Commissioner of Admin.	Director of State Purchasing	Commissioner of Administration
MAINE	State Purchasing Agent	State Purchasing Agent (S)	St. Pur. Agent/Standardization Committee (S)
MARYLAND	Secretary, Dept. of Gen. Svs. (S)	Chief, Purchasing Bureau (S)	Board of Public Works (S)
MASSACHUSETTS	State Purchasing Agent	Purchasing Agent	State Purchasing Agent
MICHIGAN	Director of Management & Budget (S)	State Purchasing Director (OP)	State Purchasing Director
MINNESOTA	Commissioner of Admin.	Director of Materials Management	Commissioner, Dept. of Admin.
MISSISSIPPI	Director, Office of Gen. Svs.	Director, Bureau of Purchasing	Director, Bureau of Purchasing
MISSOURI	Commissioner of Admin.	Director of Purchasing	Commissioner of Administration
MONTANA	Director, Dept. of Admin.	Admin., Purchasing Division	Director, Dept. of Administration
NEBRASKA	Material Administrator	Material Administrator	Director, Dept. of Admin. Svs.
NEVADA	Admin., State Purchasing Div.	Admin., State Purchasing Div.	Director, Dept. of General Svs.
NEW HAMPSHIRE	Dir., Div. of Plant & Prop. Management	Admin., Bureau of Purchase & Prop. (OP)	Director, Div. of Plant & Prop. Management (R)
NEW JERSEY	Dir., Div. of Purchasing & Prop.	Supervisor, Purchase Bureau	Dir., Div. of Pur. & Prop. or State Treasurer
NEW MEXICO	State Purchasing Agent	Director, Purchasing Division	Dir., State Purchasing Division
NEW YORK	Commissioner of General Svs.	Dir., Standards & Purchase Group	Commissioner of General Svs.
NORTH CAROLINA	Secretary of Administration	State Purchasing Officer	Advisory Budget Commission/ Sec. of Admin.(S)
NORTH DAKOTA	Dir., Office of Mangmt. & Budget	State Purchasing Agent	Director, Office of Mangmt. & Budget
OHIO	State Purchasing Administrator	Manager of Procurements (OP)	Administrator, State Purchasing (S/R)

TABLE 1C (Continued)

STATE	Central Purchasing	Daily Operations	Legal Policies
OKLAHOMA	Director of Purchasing	Director of Purchasing	State Board of Public Affairs
OREGON	Dir., Dept. of Gen. Services	Administrator, Purchasing Div.	State Attorney Gen.; Dir., Dept. of Gen. Svs.
PENNSYLVANIA	Sec., Dept. of Gen. Services	Director, Bureau of Purchases (R)	Secretary, Dept. of General Svs. (S)
RHODE ISLAND	Director of Administration	State Purchasing Agent (S)	State Purchasing Agent (S)
SOUTH CAROLINA	Dir., Div. of General Services	Materials Management Officer (S)	Materials Management Officer (S)
SOUTH DAKOTA	Com., Bureau of Admin.	Dir., Purchasing & Printing	Director, Purchasing & Printing
TENNESSEE	Director of Purchases	Asst. Commissioner for Procurement	Board of Standards
TEXAS	Exec. Dir., State Pur. & Gen. Serv. Commission	Director of Purchasing (OP)	State Purchasing and Gen. Svs. Commission (S)
UTAH	Chief Procurement Officer	Director, Division of Purchasing	Procurement Policy Board (S)
VERMONT	Director of Purchasing	Director of Purchasing	Purchasing Director
VIRGINIA	Dir., Div. of Purchase & Supply	Asst. Director, Procurement	Dir., Div. of Purchases & Supply
WASHINGTON	Asst. Dir., Off. of St. Procurement	Asst. Dir., Office of State Procurement	Asst. Dir., Office of State Procurement
WEST VIRGINIA	Com., Dept. of Finance & Admin.	Purchasing Director	Commissioner, Finance & Administration
WISCONSIN	Sec., Dept. of Administration	Dir., State Bureau of Procurement (OP)	Dir., State Bureau of Procurement (OP)
WYOMING	Admin., Div. of Pur. & Prop. Control	State Program Mangr., Div. of Purchasing & Property Control	Admin., Div. of Purchasing & Prop. Control

KEY: S = Statute; R = Rule or Regulation; OP = Operating Procedure
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 2. Purchase of Commercially Available Items

(13) Does your state authorize by statute the purchase of goods or services by competitive negotiation? This does not relate to sole source, emergencies, etc.

(14) Do almost all of your purchases consist of commercially available items that are sold to other customers and the public at large?

(15) What are the significant exceptions, if any?

TABLE 2

STATE	A law authorizing the purchase of goods or services by competitive bidddding	Purchases containing commercially available items sold to others and the public at large	Exceptions
ALABAMA	N	Y	Some paints; Some specially designed trailers and boats.
ALASKA	Y	Y	
ARIZONA	Y	Y	
ARKANSAS	N	Y	
CALIFORNIA	N	Y	Specialty items custom manufactured for unique agency needs, e.g. rotary snowplows, highway stripers, special push bumpers, software.
COLORADO	N	Y	
CONNECTICUT	N	Y	License plates; Bituminous concrete materials; Lottery tickets.
DELAWARE	N	Y	
FLORIDA	Y	Y	
GEORGIA	N	Y	Custom patrol boats; Experimental models for research.
HAWAII	N	Y	Some office furniture is specifically manufactured from Hawaii designs.
IDAHO	Y	Y	
ILLINOIS	Y	Y	
INDIANA	N	Y	
IOWA	N	Y	Raw materials for state industries.
KANSAS	Y	Y	
KENTUCKY	Y	Y	
LOUISIANA	N	Y	Raw materials for correctional industries. Buy from C.I., Blind, Disabled.
MAINE	N	Y	Copy/Duplicating.
MARYLAND	Y	Y	Commodities produced by prison industries, blind industries and services, sheltered workshop for handicapped.
MASSACHUSETTS	N	Y	
MICHIGAN	N	Y	Commodities and services approved by Office of Purchasing must be purchased from Michigan State Industries.
MINNESOTA	N	Y	Products manufactured to state specifications, e.g., uniforms, some soaps, highway marking paint.
MISSISSIPPI	N	Y	
MISSOURI	Y	N	Services.
MONTANA	Y	Y	
NEBRASKA	Y	Y	License plates, Items manufactured by prison industries.
NEVADA	N	Y	Prison industry products.
NEW HAMPSHIRE	N	Y	State Police Uniforms, license plates, lottery tickets, state maps, state decals.
NEW JERSEY	N	Y	State specifications for specialized and/or unique products suited to State's needs including lottery systems and specialized equipment.
NEW MEXICO	N	Y	
NEW YORK	N	Y	Items manufactured, produced or assembled by Preferred Source Entities (such as Corrections, Industries for the Blind, Industries for the Handicapped).
NORTH CAROLINA	Y	Y	
NORTH DAKOTA	N	Y	

TABLE 2 (Continued)

STATE	A law authorizing the purchase of goods or services by competitive biddding	Purchases containing commercially available items sold to others and the public at large	Exceptions
OHIO	N	Y	Items manufactured by OPI (Prison Industries and (OIH) Ohio Industries for Handicapped can be purchased directly without competitive bidding according to statute.
OKLAHOMA	N	Y	
OREGON	N	Y	Highway marking paint.
PENNSYLVANIA	N	Y	
RHODE ISLAND	N	Y	Uniforms and institutional clothing.
SOUTH CAROLINA	N	Y	
SOUTH DAKOTA	Y	Y	Highway marking paint, research equipment.
TENNESSEE	Y	Y	Items manufactured by prison industries and blind services.
TEXAS	Y	Y	Paint, items from prison industries and Texas Industries for the Blind and Handicapped. Telecommunications and Automated Information systems and services.
UTAH	Y	Y	
VERMONT	Y	Y	Certain size cabinets; some draperies.
VIRGINIA	Y	Y	
WASHINGTON	N	Y	
WEST VIRGINIA	N	Y	
WISCONSIN	Y	Y	
WYOMING	Y	Y	

KEY: Y = YES; N = NO
SOURCE: November 1987 Survey by The Council of State Governments for the National Association of State Purchasing Officials.

Table 3. Requirements for Sealed Bids

(16) Is there a requirement in the state's purchasing law for sealed bids, publicly opened?

(17) Above what dollar amount are you required to use sealed bids?

(18) Below this dollar amount, do your small purchase procedures usually require competitive quotations?

(19) What is the usual dollar amount below which agencies are authorized to obtain their own quotations locally?

(20) Can state agencies obtain quotations for local purchase of items or types of items that are available under a contract issued by the central purchase office?

(21) What are the statutory criteria for evaluating sealed bids (IFB's) and awarding contracts? Please quote from the relevant statutory provision(s) and provide a complete citation. (Printed in italics under states' names.)

TABLE 3

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation If Central Purchasing Contract Exists
ALABAMA	Y	2,000	Y	100	N
"... award shall be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purpose for which required, the terms of delivery, transportation charges, and the dates of delivery." Title 41-16-32					
ALASKA	Y	5,000	Y	5,000	N
The procurement officer shall award a contract "... to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid." A.S. 36.30.170					
ARIZONA	Y	10,000	Y	750	N
"The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the Invitation for Bids." (A.R.S. §41-2533.G.)					
ARKANSAS	Y	5,000	Y	5,000	N
"The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids, and all other bidders requesting to be notified of the award decision shall be promptly notified of said decision." Arkansas Statutes 1947 Annotated Sec. 14-254(H)					
CALIFORNIA	Y	10,000	Y	960	N
Award to "lowest responsible bidder meeting specifications". (Public Contract Code Section 10301)					
COLORADO	Y	3,000	Y	500	N
"All orders awarded or contracts made by the state purchasing director shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required, and the date of delivery." Colorado 24-103-202					
CONNECTICUT	Y	7,500	Y	400	N
"All ... contracts shall be awarded to the lowest responsible qualified bidder, the quality of article to be supplied, their conformity with the specifications, their suitability to the requirements of the state government and the delivery terms being taken into consideration and, at the discretion of the commissioner of administrative services, trade-in or resale volume of the articles may be considered where it appears to be in the best interests of the state." Conn. General Statutes, Section 4-114					
DELAWARE	Y	5,000	N	5,000	Y
"... shall be awarded ... by the agency or a representative delegated by the agency, in accordance with regulations prescribed by the agency, to the lowest responsible vendor unless, in the opinion of the agency or its delegated representative, the interest of the State ... shall be better served by the awarding of the contract to some other vendor, which may then be done, provided the agency shall set down in its minutes the reason or reasons for granting the contract to the person other than the lowest responsible vendor, and clearly describing how the interest of the State or the contracting county shall be better served by awarding the contract to other than the lowest vendor. In determining how the interest of the State or contracting county is better served in making an award to other than the lowest responsible vendor, the agency may take into consideration unsatisfactory performances on any previously awarded contract by the vendor being rejected." Chapter 69, ss 6907, Title 29 of the Delaware Code					
FLORIDA	Y	3,000	Y	3,000	N
Laws: None. Regulations: 13A-1.02(9) - *"Determination of Best Bid - It shall be the responsibility of the agency to determine the lowest responsive bidder meeting specifications and conditions of a bid invitation. In any case where an agency makes a determination to award to a bid other than the low bid meeting specifications, it shall first submit to the Division of Purchasing its complete file containing all information available to that agency, including reasons for recommending a bid other than the low bid."*					
GEORGIA	Y	5,000	Y	5,000 (6)	N
"... shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the standard specifications which have been established and prescribed, the purpose for which said articles are required, the discount allowed for prompt payment, the transportation charges and the date or dates of delivery specified in the bid." GA Laws 1937 pp. 503, 508; 1939, pp. 160, 165 (GA Code Ann. ss40-1910)					
HAWAII	Y	4,000	N	(1)	N
"All contracts ... shall be made with the lowest responsible bidder ..." Section 103-32, Hawaii Revised Statutes					

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
IDAHO	Y	5,000	Y	500 (2)	Y
"Lowest Responsible Bidder. The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed as set out in the specifications, in determining the lowest acquisition price." ID					
ILLINOIS	Y	5,000	Y	2,500	N
"That all purchases, contracts and expenditure of funds shall be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality and serviceability . . ." Chapter 127, para. 132.1, section 6a, Illinois Revised Statutes.					
INDIANA	Y	5,000	Y	50	Y
Sec. 1. (a) *"Contracts for supplies must be awarded under section 2 (competitive sealed bidding)"* of this chapter. (b) *"Contracts for services are not required to be rewarded under this chapter."* Indiana Code 4-13.4-5-1 Sec. 2. (a) *"A contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids."* Indiana Code 4-13.4-5-2					
IOWA	Y	5,000	Y	500	Y
". . . Contracts for the purpose of items shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price." Code of Iowa, 1979 edition, Section 18.6, pp. 72-73.					
KANSAS	Y	5,000	Y	2,000	N
". . . shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids." KSA 75-3740(a)					
KENTUCKY	Y	1,000	Y	1,000	N
"The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated bid price." Kennnnnntucky Model Procurement Code 45A.080(5)					
LOUISIANA	Y	5,000	Y	(8)	N
"The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation To Bid" (LRS 39:1594G)					
MAINE	Y	2,500	Y	250	N
"Except as otherwise provided by law, orders awarded or contracts made shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the services, supplies and materials . . ." Maine R.S. 5-1816 (7)					
MARYLAND	Y	10,000	Y	1,000	N
The Department shall make awards on the basis of competitive sealed bidding. "Lowest bid price or the lowest evaluated bid price, whichever is applicable."					
MASSACHUSETTS	Y	500	N	500	Y
"No criteria defined or set forth."					
MICHIGAN	N	9,999	Y	1,000	N
"Lowest responsive and responsible bidder meeting specifications" - Rule					
MINNESOTA	Y	15,000	Y	100/1,500 (10)	N
"All contracts and purchases made by or under the supervision of the commissioner or any state department or agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids." Minnesota Statutes 16.08					
MISSISSIPPI	Y	2,500	Y	500	N
"Awards shall be made to the lowest and/or best bid meeting all requirements of the specifications." Chapter 7, "Public Purchasing Section 31-7-13, Regulation 6 - Purchasing Division Regulation					
MISSOURI	Y	2,000	Y	2,000	N
"The contract shall be let to the lowest and best bidder." Missouri Revised Statutes 1969, Section 34.040					
MONTANA	Y	2,000	Y	500	N
"In awarding contracts for purchase of products, materials, supplies, or equipment such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible bidder whose offered material, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies and equipment are comparable in quality and performance." Montana Code Annotated, 1978, Title 18, Chapter 1, Part 1; 18-1-102					
NEBRASKA	Y	5,000	Y	35	N
"(award) . . . shall be made to the lowest responsible bidder, taking into consideration the best interest of the state, the quality or performance of the articles or property proposed to be supplied for which required, and the times of delivery." Nebraska Revised Statutes 81-161					
NEVADA	Y	7,500	Y	500	N
"Every contract or order shall be awarded to the lowest responsible bidder, taking into consideration: (1) The location of the using agency to be supplied; (2) The qualities of the articles to be supplied; (3) Their conformity with the specifications; (4) The purposes for which they are required; (5) The dates of delivery." Nevada R.S. 333.340					
NEW HAMPSHIRE	N	2,000*	Y(3)	100	N
None					

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
NEW JERSEY	Y	2,500	Y	1,500	N
". . . award shall be made . . . to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered." New Jersey Statutes Annotated 52:34-12					
NEW MEXICO	Y	5000	Y	250	N
"Awards for all material and services are awarded based on the lowest responsible bid meeting the minimum specifications and delivery requirements."					
NEW YORK	Y	5,000	Y	5,000	N
"Contracts . . . shall be let to the lowest responsible bidder, as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the articles proposed to be supplied, their conformity with the specifications, the purposes for which required and the terms of delivery . . ." N.Y.S. Finance Law, Article XI, Section 174					
NORTH CAROLINA	Y	5,000	Y	5,000	N
". . . acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the article offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use, the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question which if controlling shall be made a matter of record." GS 143-52, pp. 2-3 Public Laws Relating to the North Carolina Purchase and Contract Division					
NORTH DAKOTA	Y	2,000*	Y	300	N
". . . purchasing contracts shall be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability." SB 2048 Section 5					
OHIO	Y	1,000	N	1,000	N
"Contracts shall be awarded to the lowest and best bidder on each item and the Department of Administrative Services may accept or reject any or all bids in whole or by item." Ohio Revised Code Section 125.11					
OKLAHOMA	Y	500	N	500	N
"Award shall be made to the lowest and best bidder . . ." Oklahoma State Purchasing Act, Section 85.5					
OREGON	Y	15,000	Y	5000	N
". . . shall award the contract to the lowest responsible bidder." ORS 279.029					
PENNSYLVANIA	Y	300	Y	5,000	N
". . . award the contracts to the lowest responsible bidder . . ." The Administrative Code of 1929 of the Commonwealth of Pennsylvania, as amended, Section 2409					
RHODE ISLAND	N	*(4)	Y	100	N
"Awards will be made to the lowest responsible bidder, as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the materials, equipment or supplies to be furnished, their conformity with the specifications, the purpose for which required and the terms of delivery." State of Rhode Island Division of Purchases, General Specification for all quotations and contracts, paragraph 25, Title: Award					
SOUTH CAROLINA	Y	2,500	Y	2,500	N
The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids . . . (IFB) Section 11-24-1530(7)					
SOUTH DAKOTA	Y	3,000	Y	500	N
"In determining the successful bidder, the lowest or most advantageous price upon grade, quality, or quantity and general conditions specified, shall be the determining factors." S.D. Code 5-23-11.1					
TENNESSEE	Y	2,000	Y	1,000	N
"Each contract shall be awarded and let by the commissioner in the name of the State of Tennessee with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid."					
TEXAS	Y	(5)	Y	1,500	N(9)
"The Commission shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required." Section 3.11(e), Article 601b, V.T.C.S.					
UTAH	Y	10,000	Y	1,000	N
"The contract shall be awarded . . . to the lowest responsive and responsible bidder whose bid meets the requirement and criteria set forth in the Invitation For Bids." Utah 63-56-20					
VERMONT	N	10,000*	Y	200	N
". . . shall be awarded to the person whose bid or quotation is in the best interest of the state . . . in his determination of the best interest of the state shall consider (1) specified quality (2) price (3) ease of access of supplies (4) incidental administrative costs (5) proven reliability of bidder." Requisition for supplies and materials (T. 29, Sec. 903)					
VIRGINIA	Y	10,000	Y	1,200	N
". . . the contract shall be let to the lowest responsible bidder, taking into consideration the quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery provided however that whenever the Division has reason to believe that the low bid is not the best price, it shall have authority to enter into further negotiations with the apparent low bidder to the end that the price paid shall be the best price obtainable." Code of Virginia 2.1-442					

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation If Central Purchasing Contract Exists
WASHINGTON	Y	5,000	Y	2,500	N
"... the contract shall be let to the lowest responsible bidder ... In determining 'lowest responsible bidder,' in addition to price, the following elements shall be given consideration: (1) The ability, capacity and skill of the bidder to perform the contract or provide the service required; (2) The character, integrity, reputation, judgement, experience and efficiency of the bidder; (3) Whether the bidder can perform the contract within the time specified; (4) The quality of performance of previous contacts of services; (5) The previous and existing compliance by the bidder with laws relating to the contract or services; (6) Such other information as may be secured having a bearing on the decision to award the contract." 1965 c 8 ss 43.19.1911					
WEST VIRGINIA	Y	5,000	Y	5,000	N
"... shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the state government and the delivery terms." W. VA Code ss 5A-3-14 (1972)					
WISCONSIN	Y	10,000	Y	5,000	N
"All orders awarded or contracts made by the department for all materials, supplies, equipment and contractual services, except as otherwise provided in subs. (2), (6) and (7), shall be awarded to the lowest responsible bidder, taking into consideration the location of the institution or agency, the quantities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required and the date of delivery; but preference shall always be given to materials, supplies, equipment and contractual services of Wisconsin producers, distributors, suppliers and retailers." Subchapter IV, Section 16.75-1					
WYOMING	Y	1,500	Y	1,000	N
"... award on the basis of lowest evaluated price ..." WS 9-2-101b (XIV) (A)					

KEY: *Even though there is no legal requirement, by policy above this amount sealed bids are used.

(1) Agencies are not mandated to buy them through Central Purchasing.

(2) No bidding requirements; some agencies given authority of $1,000, $2,500 or $5,000 of which certain requirements have to be met, including monthly reports.

(3) At buyers' discretion.

(4) All solicitations.

(5) No specified amount.

(6) Four major universities up to $5,000.

(7) Agencies listed in Question 4 have same purchase authority as state purchasing office, all other agencies and boards can go up to $500.

(8) Depends on Delegated Purchasing Authority which varies from $250 - 5,000.

(9) Unless the order is under the contract minimum order quantity, then agencies may purchase on a SPOT basis.

(10) Two levels of local Purchase Authority.

SOURCE: November 1987 Survey by The Council of State Governments for the National Association of State Purchasing Officials.

Table 3A. Contracts Awarded By Discount Only Frequency and Criteria

(22) Does the state award contracts on the basis of a discount offered without consideration of the net price?

(23) If yes, how frequently does this happen?

(24) If yes, under what circumstances to you award contracts on the basis of discount only, without evaluating net price?

TABLE 3A

STATE	Contracts Awarded by Discount Only	Frequency	Criteria for Awarding Contracts on the Basis of Discount Only Without Evaluating Net Price
ALABAMA	Y	S	Posted prices for such items as gasoline; since most major suppliers have the same posted prices, a definite amount is bid posted price.
ALASKA	N	R	
ARIZONA	N		
ARKANSAS	Y	S	On commodities that have price catalogs that are identical (i.e., automotive parts, farm machinery parts, and other related items) where the price lists are distributed by the manufacturer to all dealers and distributors.(1)
CALIFORNIA	N		
COLORADO	N		
CONNECTICUT	Y	S	Sole source equipment contracts; multiple awards, agency choice type contracts.
DELAWARE	Y	S	On commodities that have identical price catalogs.
FLORIDA	N		
GEORGIA	N		
HAWAII	N		An exception is small lamps, discounts solicited from national catalog prices.
IDAHO	Y	R	Price agreements.
ILLINOIS	N		
INDIANA	N		
IOWA	N		Attempt to compare vendor catalog prices of most commonly used items to insure discounts give reasonable prices, but items are so numerous and catalog prices change so frequently it is nearly impossible to verify low net price on every item on contract.(2)
KANSAS	Y	R	Scientific supplies, chemicals, glassware, etc., where numerous items and regular catalog price changes occur.
KENTUCKY	N		Purchase under GSA contracts; however, in most cases, the net cost is considered under GSA compared to what the product can be obtained for by competitive, open market bid. If it is determined that the GSA pricing is as good or better than can be qcquired by bid, contract is accepted; if not, the requirement is placed on bid. Utilization of GSA contracts are optional.
LOUISIANA	Y	S	Discount against a certain price list on multiple award contracts and certain commodities.
MAINE	N		If discount is within a reasonable time frame; as long as discount can be taken advantage of within reason.(3)
MARYLAND	N		
MASSACHUSETTS	N		
MICHIGAN	N		
MINNESOTA	N		
MISSISSIPPI	N		
MISSOURI	Y	R	An exception is small lamps, discounts solicited from national catalog prices.
MONTANA	Y	R	When more than one pre-established price list or catalog has been specified within the Request for Quotation as minimum acceptable quality.
NEBRASKA	N		
NEVADA	N		
NEW HAMPSHIRE	Y	S	Discounts from price catalogs, i.e., office supplies, furniture.
NEW JERSEY	N		
NEW MEXICO	N		
NEW YORK	N		

TABLE 3A (Continued)

STATE	Contracts Awarded by Discount Only	Frequency	Criteria for Awarding Contracts on the Basis of Discount Only Without Evaluating Net Price
NORTH CAROLINA	N		
NORTH DAKOTA	N		
OHIO	N		
OKLAHOMA	Y	R	When there are limited numbers of manufacturers and each (2 or 3) has unique equipment such as mailing equipment.
OREGON	N		
PENNSYLVANIA	Y	R	Multiple award contracts using discount from price lists.
RHODE ISLAND	N		
SOUTH CAROLINA	N		
SOUTH DAKOTA	N		
TENNESSEE	Y	R	Percent discounts from price schedules for parts. Auto, farm equipment, etc.
TEXAS	N		
UTAH	N		
VERMONT	N		
VIRGINIA	N		
WASHINGTON	N		In areas such as electrical, plumbing, lamps or hardware, etc., Bid evaluation is done using standard, published price lists, indexes, etc.
WEST VIRGINIA	N		
WISCONSIN	N		
WYOMING	N		

KEY: Y = Yes; N = No; O = Often; S = Sometimes; R = Rarely
(1) Where price lists are the same, computation of net prices not needed to determine low bid.
(2) Follow-up indicates net prices computed and compared on sampling of items to determine low bid.
(3) Respondent interpreted question to mean cash discount for prompt payment rather than trade discount from price list.
SOURCE: November 1987 Survey by The Council of State Governments for the National Association of State Purchasing Officials.

Table 4. RFP Evaluation Criteria

(25) What are the statutory criteria for evaluating RFP's and awarding contracts? Please quote the relevant statutory provisions(s) and provide a photocopy of the statutory citation.

TABLE 4

STATE	Statutory Provision(s)
ALABAMA	All contracts of whatever nature for labor, services or work . . . shall, except as otherwise provided in this article, be let by free and open competitive bidding, on sealed bids, to the lowest responsible bidder. (Acts 1957, No. 343, p. 452, -a7- 1; Acts 1961, No. 870, p. 1365; Acts 1976, No. 751, p. 1032, -a7- 1.) "When purchases are required to be made through competitive bidding, award shall, except as provided in subsection (e), be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges and the dates of delivery . . ." (-a7-41-16-26. (a))
ALASKA	Sec. 36.30.250. AWARD OF CONTRACT. "(a) The procurement officer shall award a contract under competitive sealed proposals to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state . . ." Sec. 36.30.270. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING CONTRACTS. "(a) Notwithstanding conflicting provisions of AS 36.30.100 - 36.30.260, a procurement officer shall negotiate a contract for an agency with the most qualified and suitable firm or person of demonstrated competence for architectural, engineering, or land surveying services . . ."
ARIZONA	The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to this State taking into consideration the evaluation factors set forth in the request for proposals.
ARKANSAS	Award made to responsible offeror whose proposal is determined to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation.
CALIFORNIA	Services: award to "lowest responsible bidder meeting the standards" or to "the bidder whose proposal is given the highest score by the evaluation committee", using "methods specified in the request for proposal". (Public Contract Code 10344). Consultant Services: same as above (Public Contract Code 10377). Electronic Data Processing & Telecommunications: award to "the proposal which provides the most cost-effective solution to the State's requirements, as determined by the evaluation criteria contained in the solicitation document". (Public Contract Code 12102)
COLORADO	3-203.15 - 3-203.18 (COPY ON FILE)
CONNECTICUT	Section 4-114 et. seg.
CONNECTICUT	General Statutes. "All bids submitted as provided in section 4-112 shall be based on such standard specifications as may be adopted by the standardization committee. All open market orders or contracts shall be awarded to the lowest responsible qualified bidder, the qualities of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the state government and the delivery terms being taken into consideration and, at the discretion of the commissioner of administrative services, trade-in or resale value of the articles may be considered where it appears to be in the best interest of the state. If any such bidder refuses to accept, within ten days, a contract awarded to him, such contract may be awarded to the next lowest responsible qualified bidder, and so on until such contract is awarded and accepted. When, in the opinion of the commissioner, the best interest of the state will be served thereby, he may order that any or all bids may be rejected. If all bids are so rejected, the commissioner shall advertise again for proposals and such proposals shall be opened, awarded and approved in like manner as provided in this section and section 4-112 . . . (February, 1965, P.A. 366, S. 1; 1967, P.A. 284; P.A. 73-279, S. 13; P.A. 74-68; P.A. 76-8; P.A. 78-148, S. 8; P.A. 82-358, S. 7, 10; P.A. 83-569, S. 8, 17; P.A. 84-412, S. 3, 8; 84-418.)"
DELAWARE	None.
FLORIDA	Chapter 287, FLORIDA Statutes, and Division of Purchasing Rule 13A-1.002 (7), FLORIDA Administrative Code.
GEORGIA	OCGA 50-5-67 "(a) Except as otherwise provided in this Code section, if the total requirement of any given commodity will involve an expenditure in excess of $5,000.00, sealed bids shall be solicited by advertisement in a newspaper of state-wide circulation at least once and at least ten days prior to the date fixed for opening of the bids and awarding of the contract . . . (b) Except as otherwise provided for in this part, all contracts for the purchases of supplies, materials, or equipment made under this part shall, wherever possible, be based upon competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplies and conformity with the standard specifications which have been established and prescribed, the purposes for which the articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid . . . Ga. L. 1937, p. 503, -a7-6; Ga. L. 1939, p. 160, -a7- 3; Ga. L. 1978, p. 1054, -a7--a7- 1,2; Ga. L. 1979, p.659, -a7--a7- 4,5; Ga. L. 1980, p. 90, -a7- 2.)"

TABLE 4 (Continued)

STATE	Statutory Provision(s)
HAWAII	No Reference to RFP's. Statutes provide for award to lowest bidder, which limits bidding to IFB's.
IDAHO	'Lowest Responsible Bidder. The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations and the relative score of valued specifications will be weighed as set out in the specifications, in determining the lowest acquisition price." ID 67-5716.
ILLINOIS	No Statutory Language.
INDIANA	"Sec. 4. (a)(6) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price and the other evaluation factors set forth in the request for proposals." INDIANA Code 4-13.4-5-4 "Sec. 4. (d) The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for the proposals." INDIANA Code 4-13.4-5-4
IOWA	-a7-18.6 Competitive bidding—preference—reciprocal application—direct purchasing. "3. The director shall have the power to contract for the purchase of items by the department. Contracts for the purchase of items by the department. Contracts for the purchase of items shall be awarded on the bases of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price . . . [R60, -a7-2169; C73, -a7-121; C97, -a7-166; S13, -a7-166, 167]"
KANSAS	None, other than existing - lowest responsible bidder meeting specifications.
KENTUCKY	45A.085. "(4) The request for proposals shall indicate the relative importance of price and other evaluation factors. (5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Commonwealth, taking into consideration price and the evaluation factors set forth in the request for proposals . . "
LOUISIANA	The only area which allows RFP's is in the Law Governing Acquisition of Telecommunications Systems.(LRS 39:1754) Most of those acquisitions are by ITB's, however.
MAINE	None
MARYLAND	State Finance and Procurement Law, Title 13. (COPY ON FILE)
MASSACHUSETTS	None
MICHIGAN	Administrative Rule developed by Office of Purchasing and approved by Attorney General and Joint Legislative Committee on Administrative Rules. (Currently in Public Hearings phase.)
MINNESOTA	16B.09 CONTRACTS AND PURCHASES, AWARD. -a7-1–a7-5. History: 1984 c 544 s 14; 1Sp1985 c 13 s 118; 1986 c 363 s 4; 1986 c 444 (COPY ON FILE)
MISSISSIPPI	There is no statutory criteria for evaluating a RFP. Such awards are made on the basis of sound purchasing practices.
MISSOURI	RSMO 1986 34.040 "All purchases shall be based on competitive bids."
MONTANA	18-4-304. Competitive sealed proposals. "(1) When, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. The department may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of supplies and services by competitive sealed bidding. (2) Proposals must be solicited through a request for proposals. (3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2). (4) Proposals must be opened so as to avoid disclosure of contents . . . (5) The request for proposals must state the relative importance of price and other evaluation factors. (6) As provided in the request for proposals and under rules adopted by the department, discussions may be conducted with responsible offerors . . . (7) The award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, including the preference in 18-1-102, and the evaluation factors set forth in the request for proposals . . . History: En. Sec. 15, Ch. 519, L. 1983."
NEBRASKA	001.03 Contract Procurements. The State Purchasing Bureau may enter into contract purchase agreements for certain items, groups of items or services when continuous procurement is anticipated as opposed to one-time procurements. Formal competitive bidding procedures may be utilized with award being made to the lowest responsible bidder; 81-162. Contracts for purchases or leases may be made in any of the following forms: 1. For the furnishing of specific articles or property at specific prices; 2. For the furnishing of articles, according to the specifications, at a fixed rate for a minimum quantity, subject to furnishing a greater quantity at the same or a lesser rate; or 3. For the furnishing of articles, according to the specifications without a stated minimum at a rate stated, commonly known as a price agreement. The form of the contract to be used in any case shall be subject to the discretion of the material division.
NEVADA	"333.340 Award to lowest responsible bidder: Conditions. Every contract or order shall be awarded to the lowest responsible bidder, taking into consideration: 1. The location of the using agency to be supplied; 2. The qualities of the articles to be supplied; 3. Their conformity with the specifications; 4. The purposes for which they are required; 5. The dates of delivery. [23:333:1951]"
NEW HAMPSHIRE	Rules. Adm-Pla 406 Bid Evaluation. Adm-Pla 406.01 Award. The award will be made to the responsible bidder meeting specifications at the lowest cost unless other criteria are noted in the proposal. Unless otherwise noted in the proposal, the award may be made by individual items. The state reserves the right to reject any or all bids or any part thereof.

TABLE 4 (Continued)

STATE	Statutory Provision(s)
NEW JERSEY	NJSA 52:34-12 (Copy on File)
NEW MEXICO	SECTION 6. SECTION 13-1-117 NMSA 1978 (being Laws 1984, Chapter 65, Section 90) COMPETITIVE SEALED PROPOSALS—AWARDED.—The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the state agency or a local public body, taking into consideration the evaluation factors set forth in the request for proposal. SECTION 7. 13-1-117.1. PROCUREMENT OF PROFESSIONAL SERVICES-LOCAL PUBLIC BODIES—LEGISLATIVE BRANCH—SELECTION AND AWARD. A. Each agency within the legislative branch of government operating under the provisions of the Procurement Code and each local public body shall adopt regulations regarding its selection and award of professional services contracts; B. The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the local public body or legislative agency respectively, taking into consideration the evaluation factors set forth in the request for proposals.
NEW YORK	None for commodity procurement, RFP process is administered on a policy and procedural basis, in general only for non-commodity procurement, through the administering agency with concurrence of the Division of Budget and the Office of the State Comptroller.
NORTH CAROLINA	General Statute -a7-143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts. "As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity . . . (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s.3; 1971, c. 587, s. 1; 1975, c. 879, s. 46' 1981, c. 602, ss. 2, 3.)"
NORTH DAKOTA	None.
OHIO	Agencies evaluate and obtain the Controlling Board's approval 127.16
OKLAHOMA	-a7- 85.5. Exclusive authority of Director—Rules and regulations by Director (COPY ON FILE).
OREGON	None.
PENNSYLVANIA	No statutory criteria.
RHODE ISLAND	No Statute. Consideration of RFP's. "Awards will be made to the lowest responsible bidder, as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the materials, equipment or supplies to be furnished, their conformity with the specifications, the purpose for which required and the terms of delivery." State of RHODE ISLAND Division of Purchases, General Specifications for all quotations and contracts, paragraph 25, Title: Award.
SOUTH CAROLINA	Section 11-35-1530 "(7) Award. Award must be made to the responsive offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in evaluation and there must be adherence to any weightings specified for each factor in the request for proposals. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures for the notification of intent to award the contract and the award of the contract must be the same as those required in Section 11-35-1520(11)."
SOUTH DAKOTA	5-18-2. "Contracts to be let to lowest bidder—Rejection of bids and re-advertisement if bids unsatisfactory or in case of collusion. All contracts of any public corporation, whether for the construction of public improvements or contracts for the purchase, lease or rental of materials, supplies or equipment, when such contracts involve an expenditure equal to or in excess of the amount provided for in -a7-5-18-3, must be let to the lowest responsible bidder. The governing body shall have the right to reject any and all bids and to re-advertise for proposals if none of the bids are satisfactory, or if they believe any agreement has been entered into by the bidders to prevent competition."
TENNESSEE	Senate Bill No. 1004 "Section 2. (5) 'Multi-Step Sealed Bidding' is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the state, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers." Section 4. Competitive Sealed Bidding a. Multi-step sealed bidding.-Multi-step sealed bidding is required in the acquisition of departmental computer systems involving the purchase of hardware and the development of application software. Multi-step sealed bidding may be used, subject to approval of the board of standards, when it is not practical to prepare initially definitive specifications which will be suitable to permit an award based upon price . . b. Bid invitations and bid opening.—The department shall mail a copy of the invitation to bid to qualified bidders on the mailing list, as provided in Section 12-3-703, TENNESSEE Code Annotated. All bids received by the department shall be publicly opened and examined at the time and place specified in the invitation to bidders . . ."
TEXAS	HB 222.4 Sec. 3.022. COMPETITIVE SEALED PROPOSALS. (a) The commission may acquire telecommunications devices, systems, or services or any automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated, including computer software, by following a procedure using competitive sealed proposals . . . (b) The commission shall solicit proposals by a request for proposals . . ."

TABLE 4 (Continued)

STATE	Statutory Provision(s)
UTAH	"Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award was made." UTAH 63-56-21
VERMONT	Title 29 VSA 903 "(b) When purchasing any items mentioned in this chapter, the purchasing director, in his determination of the best interest of the state shall consider (1) specified quality (2) price (3) ease of access of supply (4) incidental administrative costs (5) proven reliability of bidder."
VIRGINIA	Section 11-37 Competitive Negotiation; 11-41 Methods of Procurement Code__of VIRGINIA. (Copy on File)
WASHINGTON	RFP's not permitted for other than data processing related purchases under current statute.
WEST VIRGINIA	5A-3 (RFP's are not specifically addressed)
WISCONSIN	Department of Administration 16.75 (2m)(g) ". . . The department's determination shall be based only on price and the other evaluation factors specified in the request for proposals . . ."
WYOMING	None for RFP's.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 5. Changes in Use of Specifications and Testing 1982-1987

(26) In general, over the last five years has the state's use of the following types of specifications or purchase descriptions increased, decreased, or stayed about the same? (Detailed design, performance functional, brand name or qualified products specifications).

TABLE 5

STATE	Detailed Design Specifications	Performance Functional Specifications	Brand Name or Equal Specifications	Qualified Products Lists
ALABAMA	D	S	I	I
ALASKA	S	S	S	S
ARIZONA	S	I	I	S
ARKANSAS	D	I	I	I
CALIFORNIA	D	I	S	S
COLORADO	S	I	S	I
CONNECTICUT	I	I	S	I
DELAWARE	S	I	S	(2)
FLORIDA	I	I	S	S
GEORGIA	S	I	D	I
HAWAII	D	I	S	I
IDAHO	S	S	I	D
ILLINOIS	S	D	S	I
INDIANA	I	S	S	(2)
IOWA	S	I	S	I
KANSAS	S	I	I	D
KENTUCKY	S	I	S	S
LOUISIANA	I(1)	I	I	I
MAINE	D	S	I	S
MARYLAND	I	I	S	D
MASSACHUSETTS	S	I	S	S
MICHIGAN	I	I	I	D
MINNESOTA	D	I	D	I
MISSISSIPPI	S	I	D	I
MISSOURI	D	I	I	S
MONTANA	I	I	I	I
NEBRASKA	D	I	S	I
NEVADA	S	S	I	S
NEW HAMPSHIRE	I	I	S	D
NEW JERSEY	I	I	D	S
NEW MEXICO	I	I	S	I
NEW YORK	S	I	D	S
NORTH CAROLINA	D	I	S	S
NORTH DAKOTA	S	I	S	I
OHIO	I	I	I	S
OKLAHOMA	D	I	S	D
OREGON	D	I	S	S
PENNSYLVANIA	S	S	I	I
RHODE ISLAND	I	I	S	I
SOUTH CAROLINA	S	I	D	I
SOUTH DAKOTA	S	I	D	S
TENNESSEE	D	I	D	I
TEXAS	S	I	S	S
UTAH	S	I	S	S
VERMONT	I	I	S	I
VIRGINIA	S	S	S	S
WASHINGTON	D	I	D	I
WEST VIRGINIA	D	I	S	I
WISCONSIN	D	I	D	I
WYOMING	D	I	D	D

KEY: I = Increased; D = Decreased; S = Same

(1) Multiple award contracts are sometimes issued for a brand name only.

(2) Does not use Qualified Products Lists.

SOURCE: November 1987 Survey by The Council of State Governments for the National Association of State Officials.

Table 5A. Basis for Specifications and Testing Standards

(27) Does central purchasing have authority to modify or otherwise determine the correctness and suitability of specifications to include in an Invitation to Bid?

(28) Do you utilize specification advisory committees made of using agency personnel?

(29)) In developing standard specifications or qualified products lists, do you circulate drafts for industry review and comment?

(30) Has central purchasing developed a materials inspection manual, or similar set of guidelines?

(31) Do you prohibit any changes to specifications, terms or conditions in bids, following public opening.

(32) Does your state have a product testing program or use product testing.

(33) If yes, identify those major products or commodities tested on a regular or systematic basis.

TABLE 5A

STATE	Suitability	Use	Development Guidelines	Prohibitions	Product Testing	Specific Products for Testing
ALABAMA	OP	OP	OP	OP	OP	Janitorial Products/All highway material
ALASKA	S	N	OP	N	OP	None
ARIZONA	S	OP	OP	N	S	None
ARKANSAS	S	N	OP	N	S	None
CALIFORNIA	S	OP	OP	OP	S	Office supplies and equipment, other items as needed
COLORADO	S	OP	N	N	OP	None
CONNECTICUT	S/OP	S	OP	OP	R	Paints, Floor cleaners and waxes
DELAWARE	OP	OP	N	N	OP	None
FLORIDA	S/R	R	OP	R	R	(Numerous)
GEORGIA	S	OP	OP	N	R	Floor Care Products
HAWAII	OP	OP	OP	N	OP	None
IDAHO	S	S/OP	OP	OP	S/R	Stripping paint
ILLINOIS	OP	N	OP	OP	OP	None
INDIANA	S	N	N	OP	S/R	Food, Highway paint, and Equipment
IOWA	R	OP	OP	OP	R	None
KANSAS	S	OP	N	OP	OP	None
KENTUCKY	Y	S/R	R	OP	R	None
LOUISIANA	S/R	OP	OP	OP	R/OP	Typewriter Ribbon, Paper Goods, Food Products
MAINE	S	OP	N	N	R/OP	Paint, Food Products
MARYLAND	S/R	OP	OP	S/R/OP	S/R	(Numerous)
MASSACHUSETTS	OP	OP	OP	N	OP	None
MICHIGAN	R	R	OP	OP	OP	Coal, fine paper, office products, vehicles
MINNESOTA	S/R	Y	Y	N	S/R	None
MISSISSIPPI	R	N	R	N	R	None
MISSOURI	S	OP	OP	OP	OP	None
MONTANA	S	R	R	N	N	Highway Striping Paint, Glass Beads
NEBRASKA	S	OP	N	R	N	(Numerous)
NEVADA	S	N	N	N	S	None
NEW HAMPSHIRE	R	OP	OP	R	OP	(Numerous)
NEW JERSEY	S	R	R	R	R/OP	Food, textiles, stationery items, paints
NEW MEXICO	S	S	OP	N	OP	Paints, chemical products, highway products
NEW YORK	S	OP	OP	OP	OP	Paint, Fuel oil
NORTH CAROLINA	S	OP	OP	OP	R	(Numerous)
NORTH DAKOTA	OP	OP	OP	OP	R	None
OHIO	S	OP	OP	N	S	None
OKLAHOMA	S	OP	OP	N	R	(Numerous)
OREGON	S/OP	S/OP	Y	N	S	Highway traffic paint
PENNSYLVANIA	OP	OP	OP	OP	S	Fuels, Textile products, Chemicals, Foods
RHODE ISLAND	S	OP	Y	OP	R	Foods

TABLE 5A (Continued)

STATE	Suitability	Use	Development Guidelines	Prohibitions	Product Testing	Specific Products for Testing
SOUTH CAROLINA	S	S	OP	OP	S	Office supplies, Janitorial supplies
SOUTH DAKOTA	S	OP	N	N	S	None
TENNESSEE	S	OP	Y	OP	S	(Numerous)
TEXAS	S	OP	OP	OP	OP	(Numerous)
UTAH	S	OP	N	N	S	Paint, Antifreeze, Road materials, Computer diskettes
VERMONT	OP	OP	OP	N	OP	None
VIRGINIA	S	OP	OP	OP	R	(Numerous)
WASHINGTON	S	Y	Y	OP	S	Paint, hospital supplies, police and fire equipment, etc.
WEST VIRGINIA	S	OP	OP	OP	N	(Numerous)
WISCONSIN	S	OP	OP	N	OP	Coal, Paint, Food, Cleaning supplies
WYOMING	OP	OP	OP	N	OP	None

KEY: Y = Yes, but has no legal basis; N = No; S = Statute; R = Rule or Regulation; OP = Operating Procedure
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 6. Indefinite Quantity Contract Terms

(34) Do your invitations for bid for indefinite quantity contracts specify approximate or estimated quantities expected to be purchased?

(35) If yes, approximately how many invitations for bid indicate estimated quantities?

(36) Do the state's indefinite quantity contracts specify a maximum quantity for a single order?

(37) If yes, approximately how many indefinite quantity contracts specify a maximum order quantity?

(38) Do the state's indefinite quantity contracts specify a minimum quantity for a single order below which purchase under the contract is not permitted?

(39) If yes, approximately how many indefinite quantity contracts specify a minimum order quantity?

TABLE 6

STATE	IFB Statement of Approximate Or Estimated Purchases	Number of Bids Indicating Estimates	Maximum Quantity Requirement for Single Order	Number of Contracts Specifying Maximum Order	Minimum Quantity Requirement for a Single Order	Number of Contracts Specifying Minimum Order
ALABAMA	Y	MOST	N		Y	MOST
ALASKA	Y	MOST	N		Y	SOME
ARIZONA	Y	MOST	N(1)		N	
ARKANSAS	Y	SOME	N		Y	FEW
CALIFORNIA	Y	FEW	Y	MOST	Y	MOST
COLORADO	Y	MOST	N		Y	12 est.
CONNECTICUT	Y	MOST	Y	MOST	N	
DELAWARE	Y	MOST	N		Y	SOME
FLORIDA	Y	SOME	N		Y	MOST
GEORGIA	Y	MOST	N		Y	FEW
HAWAII	Y	MOST	N		Y	SOME
IDAHO	Y	MOST	N		N	
ILLINOIS	Y	MOST	N		N	
INDIANA	Y	MOST	Y	FEW	Y	SOME
IOWA	Y	MOST	N			
KANSAS	Y	MOST	N		N	
KENTUCKY	Y	MOST	Y	FEW	Y	MOST
LOUISIANA	Y	MOST	N		Y	SOME
MAINE	Y	SOME	Y	MOST	N	
MARYLAND	Y	MOST	N		N	
MASSACHUSETTS	Y	FEW	Y	FEW	Y	MOST
MICHIGAN	Y	MOST	N		N	
MINNESOTA	Y	MOST	N		Y	FEW
MISSISSIPPI	Y	MOST	N		Y	SOME
MISSOURI	Y	MOST	N			
MONTANA	Y	SOME	N		N	
NEBRASKA	Y	MOST	N		N	
NEVADA	Y	MOST	N		Y	MOST
NEW HAMPSHIRE	Y	SOME	N		Y	SOME
NEW JERSEY	Y	MOST	N		N	
NEW MEXICO	Y	MOST	Y	FEW	N	
NEW YORK	Y	MOST	Y	SOME	Y	MOST
NORTH CAROLINA	Y	SOME	Y	FEW	Y	FEW
NORTH DAKOTA	Y	MOST	Y	FEW	N	
OHIO	Y	MOST	N		Y	FEW
OKLAHOMA	Y	SOME	N		N	
OREGON	Y	MOST	Y	FEW	Y	MOST
PENNSYLVANIA	Y	MOST	Y	SOME	Y	SOME
RHODE ISLAND	Y	SOME	N		N	
SOUTH CAROLINA	Y	MOST	N(2)		N	
SOUTH DAKOTA	Y	MOST	N		N	
TENNESSEE	Y	MOST	N		Y	FEW
TEXAS	Y	MOST	Y	FEW	Y	MOST
UTAH	Y	MOST	N		N	
VERMONT	Y	MOST	N		Y	FEW
VIRGINIA	Y	MOST	Y	FEW	Y	MOST
WASHINGTON	Y	MOST	N		Y	SOME

TABLE 6 (Continued)

STATE	IFB Statement of Approximate Or Estimated Purchases	Number of Bids Indicating Estimates	Maximum Quantity Requirement for Single Order	Number of Contracts Specifying Maximum Order	Minimum Quantity Requirement for a Single Order	Number of Contracts Specifying Minimum Order
WEST VIRGINIA	Y	MOST	N			
WISCONSIN	Y	MOST	N		N	
WYOMING	Y	MOST	N			

KEY: Y = Yes; N = No; U = Upward; D = Downward; B = Both; N = Neither.

NOTES: (1) SOUTH CAROLINA reserves the right to solicit large or unusual quantities; (2) ARIZONA sometimes (reserves the right to solicit large or unusual quantities.)

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 6A. Indefinite Quantity Contract Conditions

(40) Do any of your state's indefinite quantity contracts (including multiple award contracts) carry provisions which allow for renewal without rebidding at the end of the designated time period?

(41) If yes, how frequently does this occur?

(42) As a rule, do the state's indefinite quantity term contracts provide for economic price adjustments?

(43) What is the usual period for the indefinite quantity contract and what is the renewal period?

TABLE 5

STATE	Provisions for Renewal Without Rebidding	Frequency	Provisions for Economic Price Adjustments	Renewal Period
ALABAMA	N		B	1 Year/1 Year
ALASKA	Y	OFTEN	B	1 Year/2 1-year
ARIZONA	Y	OFTEN	B	1 Year/1 Year
ARKANSAS	Y	SOMETIMES	N	1 Year/1 Year
CALIFORNIA	N		B	1 Year/1 Year
COLORADO	N		B	1 Year/2 1-year
CONNECTICUT	Y	SOMETIMES	B	1 Year/1 Year
DELAWARE	Y	RARELY	B	12 mos./6 mos.
FLORIDA	Y	SOMETIMES	D	1 Year/1-2 years
GEORGIA	Y	OFTEN	B	1 Year/1 Year
HAWAII	Y	OFTEN	B	
IDAHO	Y	OFTEN	N	1 Year/1 Year
ILLINOIS	Y	FEW	B	1 Year/1 Year
INDIANA	Y	OFTEN	N	1 Year/1 Year
IOWA	Y	SOMETIMES	B	
KANSAS	Y	OFTEN	B	Year/Yearly
KENTUCKY	Y	OFTEN	B	1 Year/1 Year
LOUISIANA	Y	OFTEN	D	Yearly - 3 yrs.
MAINE	Y	SOMETIMES	B	1 yr./1 yr.(2)
MARYLAND	Y	SOMETIMES	B	1 Year/1 Year
MASSACHUSETTS	Y	SOMETIMES	B	1 Year/1 Year
MICHIGAN	N		B	2-5 yrs; no renewals
MINNESOTA	Y	OFTEN	B	1 Year/2 1-year pds.
MISSISSIPPI	Y	OFTEN	D	12 mos. with option to renew for additional 12 mos; not to exceed 24 mos. total
MISSOURI	Y	SOMETIMES	B	1 Year/ 1 Year
MONTANA	Y	OFTEN	N	1 Year, with option to renew up to a total of 3-yrs at 1 yr. intervals.
NEBRASKA	Y	RARELY	B	1 Year
NEVADA	Y	SOMETIMES	B	1 Yr./2 1-year per.
NEW HAMPSHIRE	Y	SOMETIMES	B	12 months/12 months
NEW JERSEY	Y	OFTEN	D	1 Year/1 Year
NEW MEXICO	Y	RARELY	N	1 Year/1 Year
NEW YORK	Y	SOMETIMES	B	12 months/12 months
NORTH CAROLINA	Y	RARELY	B	1 or 2 Years
NORTH DAKOTA	Y	SOMETIMES	N	
OHIO	Y	SOMETIMES	B	1 Year/1 Year
OKLAHOMA			D	1 Year
OREGON	Y	OFTEN	B	1 Year/3 Years
PENNSYLVANIA	Y	SOMETIMES	B	1 Year/(2) 1-Year Period
RHODE ISLAND	N		N	1 Year/Annual
SOUTH CAROLINA	Y	SOMETIMES	B	
SOUTH DAKOTA	Y	OFTEN	B	11 months/11 months
TENNESSEE	N		B	12 mos./60 mos. max. on multi-year
TEXAS	Y	SOMETIMES	B	1 Year/1 two years
UTAH	Y	OFTEN	B	1 Year/2 one-year
VERMONT	Y	OFTEN	B	1 Year/1 Year
VIRGINIA	Y	OFTEN	B	1 Year/1 Year
WASHINGTON	Y	OFTEN	B	1 Year/4 one-year
WEST VIRGINIA	Y	MOST	B	
WISCONSIN	Y	SOMETIMES	B	1 Year/2 one-year
WYOMING	Y	SOMETIMES	B	1 Year/2 one-year

KEY: Y = Yes; N = No; U = Upward; D = Downward; B = Both; N = Neither.
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 6B. Multiple Award Contract Practices

(44) After award, is it mandatory that requirements for state agencies under the jurisdiction of the central purchasing office be obtained in accordance with the prices, terms and conditions of multiple award contracts, or is use of these contracts optional? If yes, can the central purchasing office authorize exceptions, if justified?

(45) Do any of your state's multiple award contracts contain a most-favored-customer clause?

(46) Do you use multiple award contracts or pricing agreements, that is the award of an indefinite quantity contract to more than one supplier for furnishing a like item or category of items?

(47) How frequently are multiple award contracts (the award of an indefinite quantity contract to more than one supplier for furnishing a like item or category of items) awarded under sealed bids?

(48) How frequently are multiple award contracts awarded by negotiation without bids?

TABLE 6B

STATE	Mandatory Y/Optional	Central Purchasing Exceptions	Most-Favored Clause	Price Agreements	Sealed Bid Award	Negotiated Award
ALABAMA	Y	Y	N	N	S	R
ALASKA	Y	Y	N	Y	S	R
ARIZONA	Y	Y	N	Y	S	R
ARKANSAS	Y	Y	N	Y	R	R
CALIFORNIA	N		N	N	(5)	(5)
COLORADO	Y	Y	N	Y(3)	R	R
CONNECTICUT	Y	Y	N	Y	O	R
DELAWARE	N		N	Y	R	S
FLORIDA	Y	Y	N	Y	R	R
GEORGIA	Y	Y	N	Y(1)	R	R
HAWAII	Y	Y	N	N		R
IDAHO	Y	Y	N	Y	R	S
ILLINOIS	Y	Y	Y(6)	Y	O	R
INDIANA	Y	Y	N	N		R
IOWA	Y	Y	N	Y	S	R
KANSAS	N/A	N/A	N/A	N	N/A	N/A
KENTUCKY	Y	Y	N	Y	O	R
LOUISIANA	Y	Y	N	Y	O	R
MAINE	Y	Y	N	N		
MARYLAND	Y	Y	N	Y	S	S
MASSACHUSETTS	Y	Y	N	Y	S	R
MICHIGAN						
MINNESOTA	Y	Y	N	Y	S	R
MISSISSIPPI	N		N	Y	R	O
MISSOURI				N	R	R
MONTANA	Y	Y	N	Y	R	N(4)
NEBRASKA	Y	Y	N	Y	R	S
NEVADA	Y	Y	N	N		
NEW HAMPSHIRE	Y	Y	N	Y	R	R
NEW JERSEY	Y	Y	N	Y	R	R
NEW MEXICO	Y	N	N	Y	R	R
NEW YORK	Y	Y	N	Y	O	R
NORTH CAROLINA	Y	Y	N	Y	S	R
NORTH DAKOTA	N/A	N/A	N/A	N	R	R
OHIO	Y/OCCASIONALLY	N	N	Y	S	N(4)
OKLAHOMA	Y	Y	Y	Y	R	R
OREGON	Y	Y	Y	Y	R	R
PENNSYLVANIA	Y	Y	N	Y	S	R
RHODE ISLAND	N/A	N/A	N/A	N	N/A	N/A
SOUTH CAROLINA	Y	Y	N	Y	R	R
SOUTH DAKOTA	Y	Y	N	Y	R	R
TENNESSEE	Y	N/A	N	N	S	R
TEXAS	Y	Y	N	Y	S	R
UTAH	Y	Y	N	Y	S	R
VERMONT	Y	Y	N	Y	R	R
VIRGINIA	Y	Y	N	Y	S	R

TABLE 6B (Continued)

STATE	Mandatory Y/Optional	Central Purchasing Exceptions	Most-Favored Clause	Price Agreements	Sealed Bid Award	Negotiated Award
WASHINGTON	Y	Y	N	Y	R(8)	R
WEST VIRGINIA	Y	Y	N	Y	R	R
WISCONSIN	N		N	Y	R	R
WYOMING	Y	Y	N	Y	R	R

KEY: Y = Yes; N = No; O = Often; S = Sometimes; R = Rarely; I = Indefinite; D = Definite.

* Only those States using multiple award contracts were required to answer this section of the survey.

* Multiple award contracts = the award of an indefinite quantity contract to more than one supplier for furnishing a like item or category of items.

FOOTNOTES:

(1) Uses rarely - (only for technical equipment where interfacing of common units is required or if vendor cannot supply total requirements.)

(2) Only two commodities under multiple awards and intends to discontinue those.

(3) Only one multiple award for typewriters.

(4) Multiple award contracts are never awarded by negotiation without bids.

(5) We issue indefinite quantity contracts (state price schedules), but not multiple award contracts.

(6) EDP Rentals only.

(7) No multiple awards.

(8) Limited to special market conditions such as statewide automotive repair parts/services term contracts, etc.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 6C. Multiple Award Contract Provisions

(49) Are there specific statutory provisions or rules and regulations which authorize the award of a contract to more than one bidder? If yes, please include the cite in the table and please provide copies.

(50) Are you purchasing more from definite or indefinite quantity contracts?

TABLE 6C

STATE	Legal Basis for Contract Awarding to More Than One Bidder	CITE	Primary Contract Type
ALABAMA	N		I
ALASKA	N	2 AAC 12.920	I
ARIZONA	Y	R2-7-308.C.	I
ARKANSAS	N		D
CALIFORNIA	(5)		D
COLORADO	N		
CONNECTICUT	N		D
DELAWARE	Y	6903 (i) Del. Code	I
FLORIDA	N		I
GEORGIA	N		D
HAWAII	N		I
IDAHO	N		I
ILLINOIS	N		D
INDIANA	N		I
IOWA	N		I
KANSAS	N		I
KENTUCKY	Y		I
LOUISIANA	Y	LRS 39:1613	I
MAINE	N		I
MARYLAND	Y	Art. 21.6.03.10 (Reg.)	D
MASSACHUSETTS	N		I
MICHIGAN (4)			
MINNESOTA			I
MISSISSIPPI	Y		I
MISSOURI	N		I
MONTANA	N		I
NEBRASKA	Y		
NEVADA	N		I
NEW HAMPSHIRE	N		I
NEW JERSEY	Y	NJSA52:34-12.1	I
NEW MEXICO	N		
NEW YORK	N		I
NORTH CAROLINA	Y	NC Admin. Code 5B.1200	I
NORTH DAKOTA	N		
OHIO	N(2)	N	
OKLAHOMA	N		
OREGON	Y	OAR 125-310-045	I
PENNSYLVANIA	N		I
RHODE ISLAND	N/A		D
SOUTH CAROLINA	N		
SOUTH DAKOTA	N		D
TENNESSEE	Y	SB 1004(g)	I
TEXAS	Y	Vernon's TEXAS Civil Statutes Art. 601b, Sec. 3.10, and TX Admin. Code 113.15	D
UTAH	N		
VERMONT	N		I
VIRGINIA	N		I
WASHINGTON	Y	RCW 49.19.1906(3) "Special Market Conditions"	
WEST VIRGINIA	N		I
WISCONSIN	N		I
WYOMING	Y	WYOMING Statutes-a7-9-2-1016 (b)(xiv) and (xiv)(A)	

KEY: Y = Yes; N = No; O = Often; S = Sometimes; R = Rarely; I = Indefinite; D = Definite.

FOOTNOTES:

* Only those States using multiple award contracts were required to answer this section of the survey.

* Multiple award contracts = the award of an indefinite quantity contract to more than one supplier for furnishing a like item or category of items.

(1) Only one multiple award for typewriters.
(2) Multiple award contracts are never awarded by negotiation without bids.
(3) We issue indefinite quantity contracts (state price schedules), but not multiple award contracts.
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 6D. Multiple Award and Indefinite Quantity Contracts

(51) In making multiple awards, do you ever limit the number of successful bidders or suppliers for a particular item or contract?

(52) If yes, what are the usual factors considered in determining the number of suppliers for an item?

TABLE 6D

STATE	Limited Number of Successful Bidders or Suppliers for a Particular Item or Contract	Factors Considered In Determining the Number Suppliers for an Item
ALABAMA	Yes	Price, availability, location service capability.
ALASKA	Yes	Price, service capabilities, and location of vendor.
ARIZONA	Yes	Geographical location, size of contracts, service, market conditions.
ARKANSAS	No	
CALIFORNIA	N/A	
COLORADO	Yes	Geographic location for certain types of contracts.
CONNECTICUT	Yes	Prices, service capabilities, bidder must be authorized dealer, one contractor (low bidder) per product line.
DELAWARE	No	
FLORIDA	Yes	Pricing for line items; Terms and conditions unacceptable to the state.
GEORGIA	Yes	Capability of supplier and service required.
HAWAII	No	
IDAHO	Yes	Capability of supplier and service required.
ILLINOIS	Yes	For certain types of contracts, for such products as ready-mix concrete, road rock and aggregates. If, for example, there are ready-mix concrete plants across from each other, the low bidder gets the award. If both have the same cu. yd. price and the same rate per mile of haul both get an award. On the other hand, in a densely populated area, several companies may receive an award based on the lowest cost within the geographic area.
INDIANA	N/A	
IOWA	Yes	Price, service, coverage of state.
KANSAS	No	
KENTUCKY	Yes	Number of suppliers determined basically by the need of agencies for a product and the number of awards to insure coverage of that need. Usually will be two to four suppliers.
LOUISIANA	Yes	Contracts issued by brand name - one prime contractor for each brand; Location, service also considered.
MAINE	N/A	
MARYLAND	Yes	Vendors that are considered to perform satisfactorily, (delivery and service) and have sufficient supply of the most advantageous price to the state.
MASSACHUSETTS	Yes	Scope of product line, choice of lowest price for each category, service on some commodities, location of distributors.
MICHIGAN	N/A	
MINNESOTA	Yes	Service availability to entire State within specific time, range of products offered, life cycle cost, etc.
MISSISSIPPI	No	
MISSOURI	N/A	
MONTANA	No	
NEBRASKA	No	
NEVADA	No	
NEW HAMPSHIRE	Yes	Geographical location service capability, price, manufacturer.
NEW JERSEY	Yes	In certain areas contracts are awarded to a primary and backup source; For example, this is common in data processing supplies where the availability of supplies is essential to avoid computer shutdowns.
NEW MEXICO	Yes	Capability of supplier and service required by user.
NEW YORK	Yes	Usually don't award more than one contract on a particular manufacturer's line. Volume of sales under previous contract and project volume. Number of awards per item may be limited in the specifications.
NORTH CAROLINA	Yes	Policy limits awards to the number of suppliers deemed necessary to reasonably satisfy the intended requirements. Extreme care is exercised to protect the character and principles of competitive bidding, and dividing quantities among bidders is done only when absolutely essential to the effectiveness of the contract.

TABLE 6D (Continued)

STATE	Limited Number of Successful Bidders or Suppliers for a Particular Item or Contract	Factors Considered in Determining the Number Suppliers for an Item
NORTH DAKOTA		
OHIO	Yes	A complete line; QPL; selection of acceptable manufacturers based on broad involvement in the line of items and service capacity when applicable.
OKLAHOMA	No	All bids are tabulated; a graduated list of bidders, with lowest and best listed first is sent to agencies. The agencies have the authority to choose the suppliers; however, they are expected to buy from lowest and best. Must justify their choice if lowest and best is not used.
OREGON	Yes	Price; Completeness of line; Service capabilities.
PENNSYLVANIA	No	
RHODE ISLAND		
SOUTH CAROLINA	Yes	Quality Level, Features.
SOUTH DAKOTA	No	
TENNESSEE	Yes	Geographic awards, e.g. County, Region, etc.
TEXAS	Yes	The estimated quantity to be purchased; Do not want to spread the quantity so thin that it would not be attractive to the bidder. The amount of service required with or after the sale; the extent of product differences compared to the needs of the using agencies.
UTAH	Yes	Price, geographic location, product line coverage.
VERMONT	Yes	Needs of the State.
VIRGINIA	Yes	Usually limited to three vendors within 5% of each bid.
WASHINGTON	Yes	Price, location, service capability, agreement to state's terms and conditions.
West Vriginia	Yes	Our process of multiple awarding tends to determine number of suppliers in addition to geographies, volume, and price.
WISCONSIN	Yes	Determination of acceptable product; enough sources to meet the need.
WYOMING	No	

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 7. Bidding Procedures

(53) Compared to five years ago, is your state taking into account the cost of supplies, energy, parts, warranties, maintenance, or other costs of owning and operating the product in determining the low bidder more frequently about the same, or less frequently?

(54) Do some contracts awarded to manufacturers provide that sales and services will be rendered through local dealers?

(55) Is there a written rule for handling mistakes in bids?

TABLE 7

STATE	Frequency of Considering the Cost of Supplies, Parts, Warranties, and Maintenance of Owning and Operating Products in Determining the Low Bidder	Local Dealer Sales and Services Considered	Legal Requirement for Handling Mistakes in Bids
ALABAMA	M	Y	OP
ALASKA	S	Y	R
ARIZONA	M	Y	S
ARKANSAS	M	Y	S
CALIFORNIA	M	Y	OP
COLORADO	M	Y	S,R
CONNECTICUT	M	Y	R
DELAWARE	M	Y	OP(1)
FLORIDA	M	Y	R
GEORGIA	M	Y	R
HAWAII	M	Y	N
IDAHO	M	Y*	S
ILLINOIS	S	Y	R
INDIANA	M	N	S,R
IOWA	M	Y	R
KANSAS	M	Y	S,OP
KENTUCKY	M	Y	R
LOUISIANA	M	Y	R,OP
MAINE	M	Y	N
MARYLAND	M	Y	S,OP
MASSACHUSETTS	M	Y	OP
MICHIGAN	M	Y	R
MINNESOTA	M	Y	N
MISSISSIPPI	M	Y	R
MISSOURI	M	Y	OP
MONTANA	M	Y	R,OP(1)
NEBRASKA	M	Y	N
NEVADA	M	Y	OP(1)
NEW HAMPSHIRE	M	Y	R
NEW JERSEY	M	Y	OP
NEW MEXICO	S	Y	OP(1)
NEW YORK	M	Y	OP
NORTH CAROLINA	M	Y	R
NORTH DAKOTA	M	Y	R
OHIO	S	Y	R
OKLAHOMA	M	Y	R
OREGON	M	Y	R,OP
PENNSYLVANIA	S	Y	R
RHODE ISLAND	S	N	N
SOUTH CAROLINA	M	Y	R
SOUTH DAKOTA	M	Y	N
TENNESSEE	M	Y	S,R
TEXAS	M	Y	S
UTAH	M	Y	R
VERMONT	M	Y	N
VIRGINIA	M	Y	OP
WASHINGTON	M	Y	R
WEST VIRGINIA	M	Y	OP
WISCONSIN	M	Y	OP
WYOMING	M	Y	OP

KEY: M = More; L = Less; S = Same; Y = Yes; N = No; S = Statute; R = Rule or Regulation; OP = Operating Procedure.
* Response time now a consideration.
(1) No, but by legal basis.
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 7A. Bidding Practices

(56) Are there written guidelines for determining bidder responsibility and bid responsiveness?

(57) Is purchasing authorized by statute, rule or operating procedure to reject any and all bids, in whole or in part?

(58) In evaluating bids, are you giving more consideration to factors other than initial price?

TABLE 7A

STATE	Legal Basis for Determining Bidder Responsibility and Bid Responsiveness	Legal Basis Purchasing to Reject Any and All Bids	Legal Basis for Considering Factors Other Than Initial Price
ALABAMA	S,OP	S,R	S,R
ALASKA	R	S	S
ARIZONA	S,R	S,R	S
ARKANSAS	OP	S	N
CALIFORNIA	S,R	S	S,R
COLORADO	R	S,R,OP	S,R
CONNECTICUT	R	S	OP
DELAWARE	N	S	S,OP
FLORIDA	R	R	S,OP
GEORGIA	R	S	R
HAWAII	N	S	N
IDAHO	OP	S,R	S,R
ILLINOIS	S,R	R	R,OP
INDIANA	S,R	S	S,R
IOWA	R	S	R
KANSAS	OP	S,OP	S,OP
KENTUCKY	R	S,R	S,R
LOUISIANA	S,R	S,R	S
MAINE	R,OP	R	S
MARYLAND	S,R	S,R	S,R
MASSACHUSETTS	OP	OP	OP
MICHIGAN	R	OP	R
MINNESOTA	S,R	S	S,R
MISSISSIPPI	N	R	OP
MISSOURI	OP	S	S
MONTANA	S,R	S	OP
NEBRASKA	R	S	OP
NEVADA	S	S	S
NEW HAMPSHIRE	R	R	R
NEW JERSEY	OP	S	S
NEW MEXICO	S	S	S
NEW YORK	OP	S	S,OP
NORTH CAROLINA	S	S	S
NORTH DAKOTA	S	R	OP
OHIO	S	S	S,R
OKLAHOMA	R	S	Y(2)
OREGON	R,OP	S,R,OP	R,OP
PENNSYLVANIA	N	S	R,OP
RHODE ISLAND	R	OP	R
SOUTH CAROLINA	R	R	R
SOUTH DAKOTA	N	S	OP
TENNESSEE	S,R	S	S
TEXAS	S	S	S
UTAH	R	S	R
VERMONT	N	S	S
VIRGINIA	OP	S	S,R
WASHINGTON	S	S,R	S
WEST VIRGINIA	R	S	S
WISCONSIN	OP	S	OP
WYOMING	R	OP	S

KEY: M = More; L = Less; S = Same; Y = Yes; N = No; S = Statute; R = Rule or Regulation; OP = Operating Procedure
(2) Yes, but has no legal basis.
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 7B. Bidders Lists Practices

(59) Does central purchasing maintain a record of vendor performance?

(60) Are there written criteria for including applicants on bidder's lists?

(61) Are there written criteria for suspending or debarring bidders from the list?

TABLE 7B

STATE	Legal Requirement for Maintaining a Record of Vendor Performance	Legal Basis for Including Applicants on Bidders List	Legal Basis for Suspending Bidders From the List
ALABAMA	OP	S/OP	S/OP
ALASKA	N	S	S
ARIZONA	OP	S/R	S/R
ARKANSAS	OP	S	S
CALIFORNIA	OP	S/R	S
COLORADO	OP	N	S
CONNECTICUT	OP	OP	S
DELAWARE	OP	OP	S
FLORIDA	R	R	R
GEORGIA	OP	R	R
HAWAII	OP	N	N
IDAHO	OP	S/R	S/R
ILLINOIS	OP	R/OP	S/R
INDIANA	OP	N	N
IOWA	OP	R	R
KANSAS	N	N	N
KENTUCKY	R/OP	R	S/R
LOUISIANA	OP	N	S
MAINE	N	OP	N
MARYLAND	OP	OP	S/R
MASSACHUSETTS	N	N	OP
MICHIGAN	OP	R	R
MINNESOTA	Y	S/R	R
MISSISSIPPI	OP	R	R
MISSOURI	OP	OP	OP
MONTANA	R	S/R	R
NEBRASKA	N	N	R
NEVADA	N	OP	R
NEW HAMPSHIRE	R	R	R
NEW JERSEY	R	N	OP
NEW MEXICO	OP	S	R
NEW YORK	OP	OP	OP
NORTH CAROLINA	OP	R	OP
NORTH DAKOTA	OP	R	R
OHIO	S	S	R
OKLAHOMA	OP	R	R
OREGON	OP	OP	R/OP
PENNSYLVANIA	OP	N	OP
RHODE ISLAND	N	OP	R
SOUTH CAROLINA	OP	S	S
SOUTH DAKOTA	OP	OP	R
TENNESSEE	OP	S	R
TEXAS	OP	S	S
UTAH	OP	N	S
VERMONT	N	OP	N
VIRGINIA	OP	R	R
WASHINGTON	S	R	R
WEST VIRGINIA	OP#	OP	R
WISCONSIN	S	OP	N
WYOMING	N	R	R

KEY: * Yes, but has no legal basis.
# No, but has legal basis.
S = Statute; R = Rule or Regulation; OP = Operating Procedure
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 7C. Bidders Lists Practices

(62) Does the state maintain bidders' list by geographic area, or otherwise make purchases according to geographic areas or regions?

(63) Does your state use any formal or informal method of rotating vendors?

(64) If yes, is this done as a common or infrequent practice?

(65) Do you charge a participation fee to be on the bidders list?

(66) If yes, how much?

(67) Do you delete bidders from your bidders list due to inactive response?

(68) Is the bidder notified of this action?

TABLE 7C

STATE	Geographic Bidders' List	Vendor Rotation	Frequency	Bidders Participant Fee	Cost	Delete Inactive Bidders	Bidder Notice
ALABAMA	Y	N		N		Y	N
ALASKA	N	N		Y	5%	Y	N
ARIZONA	Y	N		N		Y	Y
ARKANSAS	Y	N		N		Y	N
CALIFORNIA	Y	N		N		Y	Y
COLORADO	N	N		N		Y	N
CONNECTICUT	N	Y	Infrequent	N		Y	Y
DELAWARE	N	N		N		Y	N
FLORIDA	Y	N		N		Y	N
GEORGIA	Y	Y	Common	N		Y	Y
HAWAII	N	N		N		Y	N
IDAHO	Y	Y	Common	N	$10(4)	Y	Y
ILLINOIS	Y	Y	Common	N		N	N
INDIANA	Y	Y	Common	N		Y(10)	N(11)
IOWA	N	N		N(2)(7)		Y	N
KANSAS	N	N		N(2)(5)		N	N
KENTUCKY	N	Y	Infrequent	N		Y	Y
LOUISIANA	Y	N		Y	$50	N	
MAINE	N	N		N	2%	Y	N
MARYLAND	N	Y	Infrequent	N		Y	N
MASSACHUSETTS	N	N				Y	N
MICHIGAN	Y	Y	Common	N		Y	Y
MINNESOTA	Y	Y	Common	N(1)		N	N
MISSISSIPPI	Y	N		Y	$10(12)	Y	Y
MISSOURI	Y	Y	Common	N		Y	Y
MONTANA	N	N		Y	3%	Y	Y
NEBRASKA	N	N		N		N	
NEVADA	Y	N		N(3)		Y	N
NEW HAMPSHIRE	N	N		N		Y	Y
NEW JERSEY	Y	N		N		Y	Y
NEW MEXICO	N(13)	N		Y	5%($75 annual)	N	
NEW YORK	N(8)	N		N		Y	N
NORTH CAROLINA	N	N		N		Y	Y
NORTH DAKOTA	N	N		N(6)		NA	NA
OHIO	Y	N		N		Y	Y
OKLAHOMA	Y	Y	Common	Y	3%		
OREGON	Y	N		N		Y	N
PENNSYLVANIA	Y	N		N		Y	N
RHODE ISLAND	N	N		N		Y	N
SOUTH CAROLINA	Y	Y	Infrequent	N		Y	Y
SOUTH DAKOTA	N	N		N		Y	N
TENNESSEE	Y	N		N		Y	Y
TEXAS	Y	N		N		Y	Y
UTAH	Y	N		N(9)		NA	NA
VERMONT	N	N		N		Y	Y

TABLE 7C (Continued)

STATE	Geographic Bidders' List	Vendor Rotation	Frequency	Bidders Participant Fee	Cost	Delete Inactive Bidders	Bidder Notice
VIRGINIA	Y	Y	(6)	N(2)		Y	Y
WASHINGTON	Y	Y	Common	N		Y	Y
WEST VIRGINIA	N	N		N		Y	N
WISCONSIN	N	N		N		Y	N
WYOMING	N	N		N		Y	N

KEY: S = Statute; R = Rule or Regulation; OP = Operating Procedure.

(1) A 5% preference for small business.

(2) Resolve tie bids in favor of in-state suppliers.

(3) In-state printing is given a 10% preference, and there is a policy for giving up to 25% above fair market value for State Vocational Rehabilitation Workshops.

(4) Biennial fee.

(5) Reciprocal provision which applies against products and bidders from States with in-state pricing preference.

(6) Vendor Rotation started 7/1/79. Cannot determine frequency at this time.

(7) Buy American for vehicles where life cycle cost is comparable to foreign manufactured.

(8) In a few instances, awards are made on geographic areas.

(9) We do have an automated Bid Mailing list which we charge $15 annually as a registration fee to vendors. We do not charge contract participants (agencies) nor do vendors "rebate" a percentage of the contracts back to us.

(10) Will be starting to delete bidders with automated system.

(11) Since this will be new I would anticipate notifying bidders.

(12) Initial fee.

(13) On a few items in order to accommodate smaller vendors who do not as a rule, operate statewide, we provide options to bid by district.

Table 8. Central Purchasing Oversight

(69) Is there a statutory or regulatory requirement that the purchasing program be subject to an independent audit?

(70) Does the central purchasing office have its own inspectors to assist or supplement inspection of the products delivered to agencies?

(71) Is there a statutory board or commission whose primary responsibility is to oversee and/or enforce state purchasing procedures?

(72) Does central purchasing have authority to send back purchase requisitions on the basis of need or quality?

(73) Is a contract void or can central purchasing authorize voiding a contract that is entered into contrary to statute or rule and regulations. Indicate if by statute, rule or regulation or operating procedure.

(74) Is there a rule prohibiting the central purchasing department or line agency from making purchases on behalf of the state employee?

TABLE 8

STATE	Statutory or Regulatory Requirement for Independent Audit	Central Purchasing Inspectors	Statutory Board or Commission Responsible for Overseeing Purchasing	Authority to Send Back Purchase Requisition on a Need Basis	Legal Basis for Authorization of Contract Voids by Purchasing	Legal Basis for Prohibiting Purchases for State Employees
ALABAMA	Y	Y	N	Y	S	R
ALASKA	N	N	N	Y	N	N
ARIZONA	Y	N	N	N	S,R	R
ARKANSAS	Y	Y	N	N	S	S
CALIFORNIA	N	Y	N	Y	S	S
COLORADO	N	N	N	Y	S	R/OP
CONNECTICUT	N	Y	Y	Y	S	OP
DELAWARE	Y	N	N	N	S	OP
FLORIDA	Y	Y	N	Y	OP	N
GEORGIA	Y	N	N	N	S	S
HAWAII	N	N	N	N	S	R
IDAHO	Y	N	N	Y	S/R	S
ILLINOIS	N	Y	N	Y	S/R	OP
INDIANA	Y	Y	N	Y	S	OP
IOWA	N	N	N	Y	R	R
KANSAS	Y	N	N	N	S	OP
KENTUCKY	Y	Y	Y	Y	S/R	R
LOUISIANA	Y	N	N	N	N*	N
MAINE	N	N	Y	Y	N	Y
MARYLAND	Y	N	Y	Y	S/R	S/OP
MASSACHUSETTS	Y	Y	N	Y	OP	N
MICHIGAN	N	N	N	N	R	S
MINNESOTA	Y	N	N	Y	R	S
MISSISSIPPI	Y	(1)	Y	Y	R	OP
MISSOURI	Y	N	N	Y	S	OP
MONTANA	Y	N	Y	Y	S	S
NEBRASKA	N	N	N	N	R	OP
NEVADA	Y	N	N	Y	S	OP
NEW HAMPSHIRE	N	N	N	Y	OP	OP
NEW JERSEY	Y	Y	N	N	OP	S
NEW MEXICO	N	N	Y	Y	OP	S
NEW YORK	(2)	Y	N	Y	S	OP
NORTH CAROLINA	Y	Y	N	Y	S	S
NORTH DAKOTA	Y	N	N	Y	R	S
OHIO	Y	Y	N	Y	R	OP
OKLAHOMA	N	Y	Y	Y	S	S/OP
OREGON	Y	N	Y	Y	S	S/OP
PENNSYLVANIA	Y	N	N	N	N	R
RHODE ISLAND	N	Y	N	Y	S	N
SOUTH CAROLINA	Y	Y	Y	N	S	OP
SOUTH DAKOTA	Y	N	N	Y	S	N

TABLE 8 (Continued)

STATE	Statutory or Regulatory Requirement for Independent Audit	Central Purchasing Inspectors	Statutory Board or Commission Responsible for Overseeing Purchasing	Authority to Send Back Purchase Requisition on a Need Basis	Legal Basis for Authorization of Contract Voids by Purchasing	legal Basis for Prohibiting Purchases for State Employees
TENNESSEE	Y	Y	Y	Y	S	OP
TEXAS	N	Y	Y	N	S	OP
UTAH	Y	N	Y	Y	S	OP
VERMONT	N	N	N	N	OP	OP
VIRGINIA	N	Y	N	N	S	R
WASHINGTON	Y	N	N	Y	U.C.C.	S
WEST VIRGINIA	N	Y	Y	Y	S	R
WISCONSIN	Y	N	N	Y	S	N
WYOMING	Y	N	N	N	S	N

KEY: Y = YES; N = NO; S = STATUTE; R = RULE OR REGULATION; OP = OPERATING PROCEDURE

* An illegal contract can be voided by the Commissioner of Administration.

(1) Does not have central purchasing.

(2) There is a pre-audit requirement before contracts over $5,000 are awarded.

SOURCE: November 1987 Survey by The Council of State Governments for the National Association of State Purchasing Officials.

Table 8A. Central Purchasing Internal Review

(75) To what extent is a buyer's recommendation or decision on a contract award subject to review and approval?

TABLE 8A

STATE	Criteria for Review and Approval of a Buyer's Recommendation or Decision on a Contract Award
ALABAMA	All buyer's recommendations are reviewed by their supervisor and approved by the purchasing agent. If a low bid is rejected, the reasons for rejection must become part of the file.
ALASKA	Approved by senior purchasing agent.
ARIZONA	Manager reviews buyer's recommendations. Manager signs contracts for $10,000 or less. Director signs all term contracts and firm contracts over $10,000.
ARKANSAS	Manager reviews buyer's recommendations.
CALIFORNIA	Buyers sign contracts for $25,000 or less. Contracts between $25,000 and $100,000 are approved by supervisors, contracts between $100,000 and $1,000,000 are approved by Purchasing Manager, contracts above $1,000,000 are approved by Deputy Director.
COLORADO	In case of an official protest or by supervisor. In "problem cases" the situation is reviewed with management before an award is made.
CONNECTICUT	All recommendations are reviewed and approved by the Chief of Procurement or, in his absence or in the case of possible controversial decision, by the Deputy Commissioner of Purchases.
DELAWARE	Buyer's recommendations are reviewed by either the Assistant Director or the Director of Purchasing who must award the contract. State Auditors audit all purchasing contracts annually.
FLORIDA	Generally four levels of review and approval, i.e., Supervisor, Bureau Chief, Division Director and Executive Director.
GEORGIA	Totally—buyers, supervisors and assistant directors have graduated levels of approval by dollar value based on responsibilities of position. Buyers are instructed to consult with their supervisor on any controversial award. Vendors may appeal all the way to the director level.
HAWAII	Award is reviewed by Division Chief.
IDAHO	If other than lowest responsible bidder, then by the Administrator.
ILLINOIS	Buyers are given written parameters outlining duties, responsibilities and authority. All buyers are required to obtain approval of Supervisor to reject or bypass a low bid and are required to give written justification. Junior Buyers are required to obtain supervisor's approval for an award in excess of $5,000. All buyers are instructed to appraise Supervisor, Division Manager and seek guidelines on any unusual purchasing problem.
INDIANA	Reviewed other than low bid meeting specifications.
IOWA	Greater than $10,000 must be reviewed and approved by Chief Purchasing Officer. Greater than $40,000 must be reviewed and approved by Director of General Services. Aggrieved bidders may appeal to the Executive Council.
KANSAS	Buyers recommendations and/or decisions are subject to review and approval by the Director of Purchases as well as the Secretary of Administration. Further, records of all purchasing transactions are maintained in files open for public review.
KENTUCKY	Buyer's award decision is subject to review at all levels, if in the buyer's opinion such reviews are necessary. Problem awards are brought to the attention of the Director and a coordinated review is made as required. Majority of awards made solely by the buyers.
LOUISIANA	Buyers sign and approve awards on purchase orders subject to review by superiors. Contracts under $1,000,000 are approved by Supervisor and Deputy Director. Contracts over $1,000,000 are also approved by the Director.
MAINE	Awards over $10,000 must be reviewed by the Chief Buyer, or protests of any kind.
MARYLAND	Senior Buyer's award authority is limited to purchases under $25,000. Purchases $25,000 to $100,000 must be approved by Chief or Supervising Buyer. Purchases $100,000 and over must be summarized showing its solicited, bidders responding and basis for award. These must be approved by Supervising Buyer, Chief of the Bureau and Director of Central Services before awarded.
MASSACHUSETTS	A great amount of responsibility is placed on the recommendation or decision of the buyer. Head Buyers may approve purchases up to $9,999.
MICHIGAN	Depends on dollar level of purchase.
MINNESOTA	Purchases over $50,000. Purchases over agencies estimated prices. Purchases from other than the low bidder.
MISSISSIPPI	Not having central purchasing the question has no application.
MISSOURI	Junior buyer after training up to $2,000. Lead buyer to $20,000. Purchasing Manager $20,000 and over. Sign-off authority varies according to experience and position.
MONTANA	Bureau Chief will review any questionable or controversial bid with Purchasing Agent prior to award of contract.
NEBRASKA	Any award over $1500 approved by Division Administrator (Purchasing Agent)—over $500 without bids approved by 3-member buyers committee.

TABLE 8A (Continued)

STATE	Criteria for Review and Approval of a Buyer's Recommendation or Decision on a Contract Award
NEVADA	When it appears to be a controversial award.
NEW HAMPSHIRE	Contract awards are reviewed and approved by the Director, Division of Plant and Property Management. If they exceed $10,000, operating procedure calls for three levels of review: Purchasing Agent, Administrator, and Director. The Administrator approves coverages greater than $1,000 and less than $10,000.
NEW JERSEY	All contract awards where a low bid is being bypassed in excess of $2,500 are subject to review and approval by the Director.
NEW MEXICO	It is reviewed by the Senior Purchasing Analyst and the Deputy Director.
NEW YORK	Contract award decisions of buyers are subject to review by: Purchasing Officer IIs - one for each team of four or five buyers; A Purchasing Officer II can sign contracts with a value of up to $100,000. Assistant Director - supervises teams, signs contracts with a value of up to $1,000,000. Director of Purchasing sign all contracts over $1,000,000.
NORTH CAROLINA	The award of all contract in excess of $5,000 are reviewed with the State Purchasing Officer and canvassed with the Board of Award. The Board of Award is comprised of two or more members of the Advisory Budget Commission. Concurrence by the above constitutes an award.
NORTH DAKOTA	All major awards are reviewed jointly by the Director of Purchasing and the buyer.
OHIO	All buyer recommendations are reviewed by the Procurement Manager. All term contracts over $10,000 are approved by Procurement Manager, Assistant Administrator and State Purchasing Administrator.
OKLAHOMA	By Assistant Director and Director on all awards over $5,000.
OREGON	Awards over $50,000 are reviewed by Management. Awards under $50,000 are reviewed by Management on exception basis.
PENNSYLVANIA	It must be reviewed by his superiors and also by a Fiscal Office under jurisdiction of the Treasury Department.
RHODE ISLAND	Administrative review and approval by next highest level of supervision to assure compliance to procedures, prior to signature by State Purchasing Agents.
SOUTH CAROLINA	Any award that is recommended to other than low bid is reviewed by two levels of supervision above the buyer.
SOUTH DAKOTA	Each contract is reviewed by the Director before it is awarded.
TENNESSEE	Subject to review and approval by the following officers in ascending order: Purchasing Agent, Supervisor, Director of Buying, Director of Purchasing, Assistant Commissioner for Procurement, Commissioner of General Services, Board of Standards.
TEXAS	Each contract is subject to review and approval by both a Senior Buyer and the Director for Purchasing.
UTAH	Contracts over $10,000 are reviewed and approved by Director of Purchasing. All awards are subject to a formal appeal process.
VERMONT	Daily review at time of signature.
VIRGINIA	It can be reviewed by his superior. All purchase orders over $25,000 for one-time purchases are approved by the Purchase Manager. No dollar limit on contracts - contract officer can approve. Any decision may be appealed to the Purchases and Supply Appeal Board.
WASHINGTON	Buyer award decisions are subject to review by Buyer 4 (Buyer's Group Manager) when in excess of following signing authorities: Buyer 1 (entry) no signing authority; Buyer 2 (Journey Level) $30,000; Buyer 3 (Lead) $50,000. When award decision exceeds $100,000 or involves sole source, other than low bid or use of proprietary specifications in bid, Director or Deputy Director approval required in addition to Buyer 4.
WEST VIRGINIA	Review and approval by Supervisor or Director. Review and approval by Commissioner of Finance and Administration. Review and approval by Attorney General.
WISCONSIN	Slight; usually only on challenge.
WYOMING	Most review is done internally by the Program Manager and the Division Administrator—periodic audits by Legislative Audit Division required statutorily.

SOURCE: November 1987 Survey by The Council of State Governments for The Association of Purchasing Officials.

Table 9. Conflict of Interest/Confidentiality Requirements

(76) Is there a conflict of interest statute or regulation that applies specifically to the purchasing process?

(77) Are there statutory or regulatory provisions authorizing confidentiality of certain types of information or data?

TABLE 9

STATE	Conflict of Interest Statute or Regulation that Applies Specifically to the Purchasing Process	Statutory or Regulatory Provisions Authorizing Confidentiality of Certain Types of Information or Data
ALABAMA	S	N
ALASKA	N	Y
ARIZONA	S	S,R
ARKANSAS	S	S
CALIFORNIA	S	S,OP
COLORADO	N	S
CONNECTICUT	S	N
DELAWARE	N	N
FLORIDA	N	N
GEORGIA	N	N
HAWAII	N	N
IDAHO	S	R
ILLINOIS	S	S
INDIANA	N	S,R
IOWA	S	S
KANSAS	N	N
KENTUCKY	S	S
LOUISIANA	N(1)	N(2)
MAINE	N	R
MARYLAND	N	S,R
MASSACHUSETTS	N	S
MICHIGAN	R	S,R
MINNESOTA	N	N
MISSISSIPPI	Y(3)	OP
MISSOURI	S	S
MONTANA	N	N
NEBRASKA	OP	N
NEVADA	N	N
NEW HAMPSHIRE	N	N
NEW JERSEY	S,OP	N
NEW MEXICO	N	S
NEW YORK	S	S,OP
NORTH CAROLINA	S	S
NORTH DAKOTA	Y(3)	N
OHIO	N(2)	R
OKLAHOMA	S	N
OREGON	S,OP	R
PENNSYLVANIA	N	S
RHODE ISLAND	N	N
SOUTH CAROLINA	S	S
SOUTH DAKOTA	R	N
TENNESSEE	S	S,R
TEXAS	S	S
UTAH	S	R
VERMONT	N	N
VIRGINIA	S	R
WASHINGTON	S	S
WEST VIRGINIA	S	R
WISCONSIN	S	S
WYOMING	N	N

KEY: N = N0; S = STATUTE; R = RULE OR REGULATION; OP = OPERATING PROCEDURE

(1) The State does have an ethics law that would apply, but not specifically for purchasing.

(2) No, but by legal basis only.

(3) Yes, but has no legal basis.

SOURCE: November 1987 Survey by The Council of State Governments for the National Association of State Purchasing Officials.

Table 9A. Instances of Fraud in State Purchasing

(78) In what areas of state purchasing have you experienced fraud from within state government?

TABLE 9A

STATE	Areas of State Purchasing that have Experienced Fraud from Within State Government
ALABAMA	The deliberate acceptance of inferior merchandise.
ALASKA	Purchase split by agencies to avoid central purchasing, restrictive specifications.
ARIZONA	Professional services; Purchases by wing agencies.
ARKANSAS	Purchase of food items; Receiving; Quotation and open market purchases.
CALIFORNIA	Misuse of purchasing forms and documents for personal gain, receiving goods other than or in addition to those specified on purchase order.
COLORADO	Receiving agencies not carefully checking products to insure they meet the specifications.
CONNECTICUT	Purchases split by Agencies to avoid central purchasing. Purchases made illegally without central purchasing approval. Willful restriction of specifications.
DELAWARE	Food and food processing.
FLORIDA	Receiving locations, especially in remote locations, are probably the most vulnerable areas.
GEORGIA	Agencies are audited monthly, very little chance except possibly collusion on the part of agency for delivery of inferior goods; Even this will be detected since we have a formal "complaint about vendor procedure."
HAWAII	Small purchasing of supplies and other consumable products.
IDAHO	Marketing by large corporation, whereas the smaller vendor is unable to fully market his commodities due to cost factor and time restraints.
ILLINOIS	We have not experienced fraud that we know of from within State Government that effects Procurement.
INDIANA	Individual agencies between agency employees and suppliers.
IOWA	Small purchases.
KANSAS	Purchases where negotiation is permitted, where individual judgement decisions are required, where competition is not required, and where transactions are not audited or reviewed by other authorities.
KENTUCKY	Any system is subject to fraud which is governed by individuals, thus, depending on who is doing what and their attitude toward their responsibilities determines the vulnerability for having fraud —dishonesty in any area. All areas are equal in this respect.
LOUISIANA	Using agencies. This has not been a problem.
MAINE	Outside state government; Vendors or between vendors.
MARYLAND	The receiving agency; Potential might exist in central purchasing if buyer's award authority is unlimited.
MASSACHUSETTS	All those noted plus romancing of purchasing personnel, conflict of interest, collusion and price fixing.
MICHIGAN	None that we know of.
MINNESOTA	Purchases made by individual state agencies.
MISSISSIPPI	Under the provisions of the negotiated contracts which Mississippi employes, all areas are vulnerable. These are multiple award, negotiated agreements made available to all state, county and municipal entities. Purchase, without limitation, may be made from these agreements with no requirement for competitive bidding being met. The door is wide open.
MISSOURI	Receipt of goods at destination. State does not have central warehousing for receiving merchandise or professional inspectors, therefore, inferior merchandise could by received. Multiple purchases of small dollar amounts to circumvent bidding requirements.
MONTANA	The state is most vulnerable to receiving both quantities and quality of materials or services less than that specified.
NEBRASKA	Some food products; agencies accepting inferior products; not meeting specials.
NEVADA	Direct purchasing by individual agencies.
NEW HAPSHIRE	We have no knowledge of any fraud, however, we do not monitor low dollar ($100) field purchase orders.
NEW JERSEY	Direct purchases made by using agencies; products and/or services delivered to agencies for which an inspection or acceptance program does not exist; purchases without competitive bidding.
NEW MEXICO	Late delivery; Quality control and inspection at point of delivery is always questionable; This office continuously sends out reminders to user agencies to monitor acceptance of commodities and to report any discrepancies immediately.
NEW YORK	Receipt of goods at destination. In New York, procedures have been established for agencies to report deviations, late deliveries or other problems. Also, New York Office of the State Comptroller periodically conducts audits of state agencies *and political subdivisions*.
NORTH CAROLINA	Preparation of bid specifications; Where users are totally dependent upon vendor advice.
NORTH DAKOTA	Specialized and sole source items, including fabricated items, technical equipment, certain detailed design items, construction materials such as reflective sheeting and sign posts.

TABLE 9A (Continued)

STATE	Areas of State Purchasing that have Experienced Fraud from Within State Government
OHIO	Direct purchases/releases and permits - splitting orders, debits to keep under $300 do not have to use purchase orders.
OKLAHOMA	Acceptance of less than quantity of inferior quality by agency itself and then agency pay for full amount.
OREGON	None.
PENNSYLVANIA	Writing proprietary specifications and purchasing at a local level.
RHODE ISLAND	Exceptions to, or areas of purchasing activity not within the jurisdiction of a central purchasing authority.
SOUTH CAROLINA	Restrictive Specifications. Substitution where there are unqualified inspectors.
SOUTH DAKOTA	The possibility of slanting specifications to include or exclude a particular product or line of products.
TENNESSEE	Purchase of road construction and maintenance materials, such as gravel, crushed rock, asphalt, etc., Construction contracts; Service contracts.
TEXAS	Use of unnecessarily restrictive specifications; No follow-up inspection by the central office.
UTAH	Quality control and inspection by receiving agencies, unduly restricting specifications, "bid shopping" by political subdivisions who, at their option, may purchase from state contracts.
VERMONT	Direct Purchases/Local Purchases.
VIRGINIA	Emergency and/or single source procurement.
WASHINGTON	Surveillance of quality and quantity of goods and services received, particularly in purchasing delegated to agencies.
WEST VIRGINIA	Receipt of inferior goods.
WISCONSIN	None.
WYOMING	None.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 9B. Enforcement Options for Fraud or Default

(79) What remedies are available by statute or regulation in case of default or fraud by suppliers?

(A) Replacement of Item
(B) Suspension from Bidding
(C) Recovery of Payments
(D) Debarment as Supplier
(E) Collection Against Supplier's Bond
(F) All of the Above

(80) Are any other remedies available in your state?

TABLE 9B

STATE	Remedies Available by Statute or Regulation In Case of Default or Fraud by Suppliers	Other Remedies
ALABAMA	B,C,D,E	Normal fraud statutes.
ALASKA	F	Purchase of commodity elsewhere and charge defaulting vendor difference in price.
ARIZONA	F	May sue to recover value of anything received by an employee or non-employee.
ARKANSAS	F	Fraud can result in award of triple damage.
CALIFORNIA	A,B.D.E	Legal action, e.g., anti-trust. Purchase elsewhere and charge defaulting vendor the difference.
COLORADO	F	Purchase of commodity in the open market and charging back to defaulting supplier any difference in price.
CONNECTICUT	F	Purchase of commodity in the open market and charging back to defaulting supplier any difference in price.
DELAWARE	B,D,E	Prosecution by the Attorney General's Office.
FLORIDA	A,B,D,E,	Recover re-procurement costs; negotiate price reductions for quality not received in commodities needed and already distributed or used by the state agencies.
GEORGIA	F	We will procure in open market and file suit for added cost.
HAWAII	E	Suspension and debarment by practice but not statute.
IDAHO	F	Obtain elsewhere and charge defaulting vendor difference in price.
ILLINOIS	F	UCC and common law remedies. Possible criminal prosecution.
INDIANA	F	Court action.
IOWA	F	Buy elsewhere and charge added cost to contractor.
KANSAS	F	Obtain elsewhere and charge defaulting vendor difference in price, Legal action through the Attorney General.
KENTUCKY	F	Legal action through the courts; re-procurement costs; prison and fines.
LOUISIANA	F	Purchase on open market with surcharge to defaulting supplier.
MAINE	A,B,D	Cancellation of order and reissuing to next lowest bidder.
MARYLAND	F	Award to next lowest bidder and assess defaulting supplier the difference in price.
MASSACHUSETTS	B,C,D,E,	
MICHIGAN	F	Cancellation of contract. Charge contractor for additional cost when obtained elsewhere.
MINNESOTA	F	Uniform commercial code provisions.
MISSISSIPPI	F	
MISSOURI	F	Obtain elsewhere and charge defaulting vendor difference in price.
MONTANA	A,B,D,E,	Buy elsewhere and charge added cost to defaulting vendor.
NEBRASKA	B,D,E	
NEVADA	F	Buy from the next lowest bidder and charge the defaulting vendor the difference, or assess a 5% penalty and buy from the next lowest bidder.
NEW HAMPSHIRE	F	There are other remedies available through the Attorney General's Office.
NEW JERSEY	F	Legal action.
NEW MEXICO	F	
NEW YORK	F	Criminal action by appropriate authorities; obtain elsewhere and charge defaulting contractor difference in price.

TABLE 9B (Continued)

STATE	Remedies Available by Statute or Regulation in Case of Default or Fraud by Suppliers	Other Remedies
NORTH CAROLINA	F	Recovery of any excess cost occasioned by default.
NORTH DAKOTA	B,D,E	
OHIO	A,C,D,E	Penalties
OKLAHOMA	F	Withhold payment on merchandise received (if any) until settlement is reached.
OREGON	F	
PENNSYLVANIA	F	
RHODE ISLAND	F	Any other remedies that may be determined as a result of further litigation or court settlement.
SOUTH CAROLINA	F	Fraud: Legal action.
SOUTH DAKOTA	B,D,E	Court action; buy elsewhere and charge defaulting vendor difference in price.
TENNESSEE	F	Damages suffered by State as a result of supplier default; go to open marker to obtain items and charge defaulting vendor difference in price.
TEXAS	F	Penalty per day for late delivery. Difference in bid price and cost of obtaining supplies elsewhere.
UTAH	F	Prosecution by Attorney General's Office.
VERMONT	B,C,D	Charge defaulting vendor difference in price obtained elsewhere.
VIRGINIA	A,B,D	May purchase from other sources and charge difference to defaulting supplier.
WASHINGTON	F	U.C.C. - Recover re-procurement costs or deduct from invoices for other orders already delivered before accepting further bids from defaulting vendor. Review with Attorney General for appropriate litigation.
WEST VIRGINIA	A,B,D,E	
WISCONSIN	F	Criminal proceedings.
WYOMING	F	Legal action by the Attorney General's Office.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 9C. Non-Competitive Practices and Remedies

(81) Do you know of instances where "back-door selling" has taken place?

(82) Do you think the practice of "back-door selling" interferes with or impairs fair competition?

(83) Are conditions under which competitive bidding may be waived set forth in writing?

(84) Is there an established format for reporting non-competitive bidding or practices to the Attorney General? If so, indicate the basis for reporting to the Attorney General.

TABLE 9C

STATE	Occurances of "Back-Door Selling"	"Back-Door Selling" Intereferes with Fair Competition	Legal Basis for Waiver of Competitive Bidding	Legal Basis for Reporting Non-competitive Bidding to Attorney General	Basis for Reporting to the Attorney General
ALABAMA	NA	Y	OP	OP	
ALASKA	Y	Y	S,R	S	
ARIZONA	Y	Y	S,R	N	
ARKANSAS	Y	Y	S	N	
CALIFORNIA	N	Y	S	OP	Identical bids reported to State Attorney General.
COLORADO	(1)	Y	S,R	S	
CONNECTICUT	(1)	Y	S	OP	Alleged collusion or anti-trust law violations.
DELAWARE	Y	Y	S	OP	
FLORIDA	(1)	Y	S	R	
GEORGIA	N	Y	R	N	
HAWAII	N	Y	S	N	
IDAHO	Y	Y	S	N	
ILLINOIS	Y	Y	S,R	R	Identical bids.
INDIANA	N	Y	S	S	Informal.
IOWA	Y	Y	S,R	OP	Informal.
KANSAS	(1)	Y	S	N	
KENTUCKY	(1)	Y	S	S	Annual to Legislature.
LOUISIANA	Y	Y	S	OP	
MAINE	Y	Y	S	N	
MARYLAND	Y	Y	S,R	S,R	
MASSACHUSETTS	(1)	Y	S,OP	N	
MICHIGAN	(1)	Y	R	OP(2)	
MINNESOTA	Y	Y	S,R	OP	
MISSISSIPPI	(1)	Y	S	N	
MISSOURI	Y	Y	S	N	
MONTANA	N	Y	S	N	
NEBRASKA	(1)	Y	S	N	
NEVADA	Y	Y	S	OP	Notify the Attorney General. Informal.
NEW HAMPSHIRE	N	Y	S	N	
NEW JERSEY	N	Y	S	R	
NEW MEXICO	N	Y	S	S,R,OP	
NEW YORK	Y	Y	S,R	OP	If conditions exist which suggest other than a truly competitive situation, then the State Attorney General's Office would be notified.
NORTH CAROLINA	(1)	Y	S	OP	
NORTH DAKOTA	(1)	Y	S	N	
OHIO	N	Y	R	N	
OKLAHOMA	(1)	Y	S	N	
OREGON	Y	Y	S,R	N	
PENNSYLVANIA	(1)	Y	OP	N	

TABLE 9C (Continued)

STATE	Occurances of "Back-Door Selling"	"Back-Door Selling" intereferes with fair competition	Legal Basis for waiver of competitive bidding	Legal Basis for reporting non-competitive bidding to Attorney General	Basis for reporting to the Attorney General
RHODE ISLAND	(1)	Y	S	N	
SOUTH CAROLINA	(1)	Y	S	R	
SOUTH DAKOTA	Y	Y	S	N	
TENNESSEE	(1)	Y	S,R	N	
TEXAS	(1)	Y	S	OP	
UTAH	Y	Y	R	N	
VERMONT	(1)	Y	S	N	
VIRGINIA	(1)	Y	OP	OP	
WASHINGTON	(1)	Y	S	N	
WEST VIRGINIA	(1)	Y	R	OP	
WISCONSIN	Y	Y	S	N	
WYOMING	(1)	Y	N	N	

KEY: Y = Yes; N = No; NA = Not Applicable; S = Statute; R = Rule or Regulation; OP = Operating Procedure.
(1) State chose not to answer question.
(2) No, but has legal basis.
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 9D. Improving Competitive Practices

(85) What corrective actions can be taken when a using agency exhibits undue preference for a particular supplier?

TABLE 9D

STATE	Corrective Actions Taken When a Using Agency Exhibits Undue Preference for a Particular Supplier
ALABAMA	Usually the specs are reviewed and corrected at that point.
ALASKA	Written notification to management, review, and revision of specifications.
ARIZONA	Written notification to management; loss of purchasing authority.
ARKANSAS	Withdraw purchasing authority until procedures are corrected.
CALIFORNIA	Withdraw their purchase delegation and thus limit them to $100 per transaction.
COLORADO	Corrective actions are not normally necessary. The Division of Purchasing does not bow to such pressures.
CONNECTICUT	Removal of all direct purchasing authority for a given period of time. Holding the fiscal head of the agency responsible for payment of illegal or unauthorized purchases. (This may be recovered in a court action.)
DELAWARE	Make recommendation to Using Agency, pointing out potential problem. Has no authority to take specific action.
FLORIDA	This would have to be noted by the legislative auditor during scheduled audits of all state agencies at which time it would be reported to the Governor and the leadership of both houses.
GEORGIA	Removal of delegated authority; frequent comprehensive audits by central purchasing with copies to state auditor.
HAWAII	Bring to agency's attention with recommendation that practice should be discontinued. If product is under contract—withhold payment, reprimand agency.
IDAHO	Any employee or officer convicted of conspiring with a vendor to influence or attempt to influence the award of a contract or to deprive or attempt to deprive a registered vendor of an acquisition award shall be guilty of a felony. (IC67-5726(3) and IC67-5734(2)).
ILLINOIS	Specifications written by agencies are reviewed by the buyer and if they are considered restrictive, they will either be changed or the agency will be requested to submit a letter of justification.
INDIANA	The using agency may be required to submit a detailed explanation of why only one particular product will work. Failure to provide an adequate reason could be basis for dropping the request.
IOWA	Conference with agency head to explain appearances and requirement for competition; investigate circumstances; pressure for Executive Council, public opinion.
KANSAS	Final awarding decision rests with Director of Purchases. When products have been certified for use, agencies are expected to use them. Appeal is possible but must be in writing so that it can be thoroughly reviewed by Division of Purchases and, if necessary, Attorney General.
KENTUCKY	Final Authority rests with the Department of Finance in all matters of Procurement; if any preference cannot be supported or is recognized as only preference, agencies are directed that such preference must cease.
LOUSIANA	Administrative pressure (letter of reprimand); publicity; audit operation; Ethics Commission. Reduction or removal of delegated purchasing authority.
MAINE	Note of reprimand; Department head can be made to pay for unauthorized purchases within his/her department by statute.
MARYLAND	Rescind the $1,000 Direct Purchase Exemption granted by the Department of General Services. Meet with agency personnel to revise specifications.
MASSACHUSETTS	Hold a hearing before the Purchasing Agent and a representative from the Attorney General's Office and not allow the purchase.
MICHIGAN	Withdrawal of delegated procurement authority.
MINNESOTA	Delegation of authority may be rescinded, Training for Agency Buyers.
MISSISSIPPI	The audit department is requested to and does make an extensive investigation into the practice.
MISSOURI	Rescind direct purchase order authority. Purchases over $2,000 are the responsibility of central purchasing, which has the authority and responsibility of revising specifications to eliminate unnecessary requirements that restrict competitive bidding.
MONTANA	The Central Purchasing Office has the authority to revise an agency's requirements in order to allow for competitive awards.
NEVADA	Purchasing has final authority for specification. We require broad coverage on items we authorize for direct purchase.
NEBRASKA	State Purchasing has authority to revise any specifications to provide greater competition.
NEW HAMPSHIRE	Agency may suggest the same vendor, but Purchasing has the final say.
NEW JERSEY	The Director of the division of Purchase and Property may revoke the agency's authority to purchase directly. Other purchasing transactions are handled by the central purchasing office and are subject to competitive bids. The department head is also notified by centralized purchasing so that appropriate action may be taken against the individual involved.
NEW MEXICO	The user agency and the vendor are both put on notice. Provided, however, that using agency can justify that performance will be restricted.

TABLE 9D (Continued)

STATE	Corrective Actions Taken When a Using Agency Exhibits Undue Preference for a Particular Supplier
NEW YORK	If the purchase order is subject to approval by this office, the purchasing officer that reviews the bid documents which must accompany the order can reject the order and advise the agency to take corrective action. If the order is subject only to approval by the Comptroller's office, his staff can reject the order and mandate that it be rebid by the using agency or the central procurement office.
NORTH CAROLINA	Purchasing has final authority and responsibility for specifications.
NORTH DAKOTA	Communication between the Purchasing Division and agency regarding state laws, availability of other products and, if apparent violation of law, the Attorney General's office assists.
OHIO	Ohio statute in place that prevents state agency from spending more than $10,000 with one vendor in same fiscal year without competitive bid.
OKLAHOMA	Single award, make agency justify in writing.
OREGON	Meet with agency in attempt to restructure their request in terms of performance required to fulfill the need. Refuse to acquire item until specifications are developed which will permit competition.
PENNSYLVANIA	A letter of reprimand can be issued and, if it continues, further disciplinary action could be taken.
RHODE ISLAND	Sufficient consideration is given to the needs and desires of the using agency by the central purchasing office. These requirements are then interpreted to buying actions within the existing rules and regulations, which are made known to all requisitioners. All purchase actions, regardless of total value, are reviewed and approved by the purchasing division and abuses of purchase authorizations evidenced in these reviews could result in administrative action to correct the deficiencies or the maximum penalty of withdrawal of their small purchase authority.
SOUTH CAROLINA	A report is filed with the Budget and Control Board and the governing body of the agency. Reduction in certification and purchase authority.
SOUTH DAKOTA	Very little if the agency can make some kind of case. Other vendors must raise the issue.
TENNESSEE	Agency personnel responsible for the abuse can be held accountable and personally liable. State auditor may intervene and take disciplinary action against employee or recommend disciplinary action be taken by employee's appointing authority. Removal of agency purchase authority.
TEXAS	Require written justification for sole source purchases be signed by highest authority at using agency; allow purchase and provide for "protest" letter to be written by purchasing to proper authority noting exception to purchase without benefit of competition.
UTAH	Recind delegated purchase authority.
VERMONT	Delegation removed.
VIRGINIA	The division will insure adequate competition irrespective of preference pressures.
WASHINGTON	If occurs in purchases delegated to agency, may be grounds for review/revocation of that authority. If in requirements submitted to State Purchasing, Buyer has responsibility to review with agency and make appropriate revisions prior to bid.
WEST VIRGINIA	The authority to purchase can be removed.
WISCONSIN	Revocation of delegation.
WYOMING	Letter of reprimand from Purchasing and/or Governor; refusal to honor contract.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 10. Central Purchasing Review/Documentation Process

(86) Are agencies required to furnish inventory and usage data to central purchasing upon request?

(87) Does central purchasing have authority for acquiring, or approving contracts for, professional services required by other state agencies? Any such contracts? All such contracts? (*Denotes response for "all such contracts.")

(88) After opening, do you usually refer bids to the using agency for its review and recommendations?

(89) Do you maintain records of the overall dollar volume of purchases issued by central purchasing and delegated agencies?

(90) Do you have an automated system that tracks dollars spent by **units** purchased?

(91) Do you have an automated system that tracks dollars spent by **type of contract?**

TABLE 10

STATE	Legal Basis for Furnishing Inventory and Wage Data to Central Purchasing	Legal Authority to Approve Contracts for Professional Services	Legal Basis for Referring Bids to Agency for Review	Records of Overall Dollar Amount Issued	Automated System to Track Dollars Spent by Units Purchased	Automated System to Track Dollars Spent by Contract Type
ALABAMA	S	OP	OP	Y	Y	Y
ALASKA	R	S	OP	Y(3)	N	N
ARIZONA	R	S,R*	OP	N	N	N
ARKANSAS	S	S	N	N	N	N
CALIFORNIA	OP	S	N	Y	Y	Y
COLORADO	S,OP	S,R	Y	Y	N	N
CONNECTICUT	OP	N	N	Y	N	N
DELAWARE	N	S	OP	N	N	N
FLORIDA	R	S,R	N	Y	N	N
GEORGIA	N	S	N	Y	Y	Y
HAWAII	N	N	OP	N	N	N
IDAHO	S	S*	OP	Y	N	Y
ILLINOIS	N	N	N	Y	Y	Y
INDIANA	S	S	OP	Y	N(2)	N(2)
IOWA	OP	OP	OP	Y	Y	Y
KANSAS	S,OP	S*	OP	N	N	N
KENTUCKY	S,OP	S,R	R,OP	Y	N	N
LOUISIANA	S,R	N	N	Y	Y	Y
MAINE	S	S	OP	Y	N	N
MARYLAND	OP	N	OP	N	N	Y
MASSACHUSETTS	OP	N	OP	Y	Y	Y
MICHIGAN	N	S	OP	N	N	N
MINNESOTA	S	S*	Y/N	Y	Y	N
MISSISSIPPI	OP	N	OP	N	N	N
MISSOURI	S	S*	N	N	Y	Y
MONTANA	S	N	N	Y	Y	N
NEBRASKA	OP	N	OP	Y	Y	Y
NEVADA	S	N	N	N	N	Y
NEW HAMPSHIRE	S	Y	OP	N	N	N
NEW JERSEY	OP	S	R	Y	N	Y
NEW MEXICO	S	S	N	N	N	N
NEW YORK	S	N	N	Y(1)	N	N
NORTH CAROLINA	S	S*	OP	N	Y	Y
NORTH DAKOTA	OP	S	N	N		
OHIO	OP	S	OP	Y	N	N
OKLAHOMA	N	N	S,OP	Y	N	N
OREGON	S	S,R	OP	N	Y	Y
PENNSYLVANIA	N	N	N	N	N	Y
RHODE ISLAND	OP	S*	OP	N	N	N
SOUTH CAROLINA	S	S	OP	Y	Y(4)	Y(4)
SOUTH DAKOTA	S	OP*	OP	N	N(5)	N(5)
TENNESSEE	S	S	OP	N	N	Y
TEXAS	S	N	N	Y	Y	Y
UTAH	OP	S	OP	N	N	N
VERMONT	OP	N	OP	Y	N	N
VIRGINIA	OP	N	N	Y	Y	Y

TABLE 10 (Continued)

STATE	Legal Basis for Furnishing Inventory and Wage Data to Central Purchasing	Legal Authority to Approve Contracts for Professional Services	Legal Basis for Referring Bids to Agency for Review	Records of Overall Dollar Amount Issued	Automated System to Track Dollars Spent by Units Purchased	Automated System to Track Dollars Spent by Contract Type
WASHINGTON	OP	N	OP(6)	N(7)	(7)	(7)
WEST VIRGINIA	OP	OP	N	N		
WISCONSIN	S	S*	N	Y	N	Y
WYOMING	OP	S*	OP	Y	N	N

KEY: Y = Yes; N = No; S = Statute; R = Rule or Regulation; OP = Operating Procedure

* Denotes response for "all such contracts".

(1) NY - We obtain some reports from vendors; also, the State Comptroller's Office provides us with quarterly computer printouts on state contracts purchases. It is difficult to obtain an accurate reading on the dollar amount of political subdivisions and other eligible non-state agency purchases. There are several thousand eligible to participate.

(2) Will have when the automated procurement system is finished.

(3) Central Purchasing Yes; Delegated Agencies No.

(4) System to be implemented in FY 87-88.

(5) Will have an automated system soon.

(6) Request agency input, review alternatives, etc. with agency, final award determination is Buyer responsibility.

(7) Under development at present.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 11. Central Purchasing Bid and Contract Procedures

(92) Are annual or term contracts staggered for expiration and rebidding so as to spread the work over the calendar or fiscal years?

(93) Is there a written procedure for holding pre-bid conferences?

(94) Does central purchasing have final responsibility for the content of Invitations for Bids?

(95) Is two-step or multi-step bidding used?

(96) Is central purchasing involved in reviewing or approving purchases under all unsolicited offers made to agencies responsible to central purchasing?

(97) Can central purchasing authorize waiving competitive bidding for the purchase of an item for experiment, test or trial?

TABLE 11

STATE	Legal Basis for Staggered Annual or Term Contracts	Legal Basis for Handling Pre-Bidding Conferences	Legal Basis for Central to Have Final Responsibility for Invitation to Bid	Legal Basis for the Use of Two-Step or Multiple-Step Bidding	Legal Basis for Central Purchase Approval Unsolicited Offers	Legal Basis for Waiving Competitive Bidding for Experiment
ALABAMA	OP	N	S,R	OP	S	OP
ALASKA	OP	N	S	S	N	S,R
ARIZONA	OP	S,R	S	S	S	N
ARKANSAS	OP	R,OP	OP	N	S	S
CALIFORNIA	OP	OP	S	OP	S	S
COLORADO	OP	R	S,R	S,R	OP	R
CONNECTICUT	OP	N	S	OP	S,R	S
DELAWARE	OP	S	N	N	OP	N
FLORIDA	OP	OP	R	R	N	R,OP
GEORGIA	OP	OP	S	S	S	S
HAWAII	OP	Y*	OP	OP	N	N
IDAHO	OP	OP	S,R	S	OP	S,R
ILLINOIS	OP	N	S	R	S	N
INDIANA	OP	N	S	S(1)	OP	OP
IOWA	OP	N	R	OP	N	R
KANSAS	OP	OP	S	OP	N	S,OP
KENTUCKY	OP	OP	S,R,OP	S	Y*	R
LOUISIANA	R,OP	N	S,R,OP	R,OP	S,R	S,R
MAINE	R,OP	N	Y*	Y*	R	OP
MARYLAND	OP	S,R	S,R	S,R	S,R	S,R
MASSACHUSETTS	OP	N	OP	OP	N	OP
MICHIGAN	OP	N	R	R	N	OP
MINNESOTA	Y*	N	S,R	N	Y*	N
MISSISSIPPI	Y*	OP	R	OP	OP	Y*
MISSOURI	OP	OP	S	N	S	N
MONTANA	OP	N	S	OP	S	N
NEBRASKA	OP	N	R	N	S	S
NEVADA	OP	N	S	N	OP	OP
NEW HAMPSHIRE	OP	N	R	N	N	OP
NEW JERSEY	R	N	S	R	S,R	S,R
NEW MEXICO	OP	OP#	S	S	OP	OP
NEW YORK	OP	N	S	N	S#	OP
NORTH CAROLINA	OP	N	S	OP	OP	R
NORTH DAKOTA	OP	N	R	Y*	Y*	OP
OHIO	OP	OP	S	NA	R	R
OKLAHOMA	OP	N	S,R,OP	OP	N	S
OREGON	OP	N	S	N	N	N
PENNSYLVANIA	OP	N	S	S#	N	OP
RHODE ISLAND	OP	N	S	N	R	OP
SOUTH CAROLINA	OP	OP	R	S	N	R
SOUTH DAKOTA	OP	OP	S,OP	OP	S	S
TENNESSEE	OP	N	Y*	S	S	N
TEXAS	OP	N	S	OP	N	OP
UTAH	OP	R	S	R	R	R
VERMONT	OP	N	OP	N	OP	OP

TABLE 11 (Continued)

STATE	Legal Basis for Staggered Annual or Term Contracts	Legal Basis for Handling Pre-Bidding Conferences	Legal Basis for Central to Have Final Responsibility for Invitation to Bid	Legal Basis for the Use of Two-Step or Multiple-Step Bidding	Legal Basis for Central Purchase Approval Unsolicited Offers	Legal Basis for Waiving Competitive Bidding for Experiment
VIRGINIA	OP	OP	OP	N	OP	OP
WASHINGTON	OP	R	S	S	R	S
WEST VIRGINIA	OP	N	R	OP	Y*	S,OP
WISCONSIN	OP	N	OP	OP	N	S
WYOMING	N	N	S	OP	R	S

KEY: Y = Yes; N = No; S = Statute; R = Rule or Regulation; OP = Operating Procedure

* Yes, but has no legal basis.

\# No, but has legal basis.

(1) Statutory provision, but not used.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 12. Non-Competitive Purchasing Requirements

(98) Is documentation required of the reason(s) for waiving competitive bidding?

(99) Are there written procedures for handling sole source purchases?

(100) Are there written procedures for handling emergency purchases?

TABLE 12

STATE	Legal Basis for Documentation for Waiving Competitive Bidding	Legal Basis for Written Procedures for Handling Sole Source Bidding	Legal Basis for Written Procedures for Handling Emergency Purchases
ALABAMA	S	S	S
ALASKA	S	S,R	S,R
ARIZONA	S	S,R	S,R
ARKANSAS	S	S,R	S
CALIFORNIA	S	S	S,OP
COLORADO	S,R	S,R	S,R
CONNECTICUT	S,R	S	S
DELAWARE	S	S	S
FLORIDA	R	S,R	S,R
GEORGIA	S	R	R
HAWAII	OP	OP	N
IDAHO	OP	S	OP
ILLINOIS	OP	S,R	S,R
INDIANA	S,R	S,R	S,R
IOWA	S	R	R
KANSAS	S,OP	S,OP	S,OP
KENTUCKY	S,R,OP	S,R	S,R
LOUISIANA	S,R	S,R	S,R
MAINE	S,R,OP	OP	OP
MARYLAND	S,R	S,R	S,R
MASSACHUSETTS	OP	OP	S,OP
MICHIGAN	R	R	R
MINNESOTA	S,R	S,R	S,R
MISSISSIPPI	Y*	S	S
MISSOURI	OP	OP	OP
MONTANA	S,R	R	S
NEBRASKA	Y*	S	OP
NEVADA	OP	S	S
NEW HAMPSHIRE	S	S	S
NEW JERSEY	S,R	S,R	S,R
NEW MEXICO	OP	S	S
NEW YORK	S,OP	OP	S,OP
NORTH CAROLINA	R	R	S
NORTH DAKOTA	S	R	R
OHIO	OP	R	R
OKLAHOMA	S,R	S	R
OREGON	S	S,R	S,R,OP
PENNSYLVANIA	OP	R	R
RHODE ISLAND	OP	N	OP
SOUTH CAROLINA	S	S	S
SOUTH DAKOTA	S	N	S
TENNESSEE	S	S	S
TEXAS	S	OP	OP
UTAH	S,R	S,R	S,R
VERMONT	N	N	OP
VIRGINIA	OP	OP	OP
WASHINGTON	R	R	R
WEST VIRGINIA	R	R	R
WISCONSIN	S	S	S
WYOMING	OP	S	S

KEY: S = Statute; R = Rule or Regulation; OP = Operating Procedure; N = No; * = Yes, but has no legal basis
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 13. Cooperative Purchasing

(101) Is there statutory authorization for cooperative purchasing between and among different units of government?

(102) Are written commitments or agreements by the parties involved used in effecting cooperative purchasing?

(103) Does state central purchasing assist local governments, formally or informally, with specifications, mailing lists, and similar information?

(104) If yes, please explain briefly; for example, is this done only upon request?

TABLE 13

STATE	Legal Basis for Cooperative Purchasing by Central Purchasing to Other Units of Government	Legal Basis for Written Agreements by Parties Involved in Cooperative Purchasing	Legal Basis for Assisting Local Governments with Mailing List and Similar Information	Criteria
ALABAMA	S	OP	OP(2)	This is done upon request. Local governments receive from their associations list of state contracts that are available for their use.
ALASKA	S	S	S	Informally, upon request.
ARIZONA	S,R	S,R	OP	Upon request.
ARKANSAS	S	S	S	Only upon request.
CALIFORNIA	S	S,R	S,R	Central purchasing combines local agency requirements with state requisitions, allows local participation in state term contracts, assists with specifications and bid evaluation criteria for buying energy efficient products, and assists in purchasing data processing goods and services.
COLORADO	S,R	N	OP	Upon request only.
CONNECTICUT	S	OP	OP	Upon request by any local government.
DELAWARE	S	N	S	The statute says we may inaugurate a system of central purchasing for state agencies and local governments and volunteer fire departments desiring to participate.
FLORIDA	N	OP	S	Statute provides the Division furnish to local government requesting same copies of all regulations adopted by the Division. Other information also furnished upon request.
GEORGIA	S	N	S	This is done by request of the local government and the payment of a small annual fee.
HAWAII	N	N	N	
IDAHO	S	S	OP	(1) Through the Association of Idaho cities and Counties; (2) through the Local-Treasure Valley Chapter - NIGP; and (3) by request.
ILLINOIS	S	S,OP	S,OP	Joint Purchasing Act - DCMS makes certain contracts available for use by local governmental units.
INDIANA	S	N	N	
IOWA	S	N	Y(1)	Done upon request as personnel and time are available.
KANSAS	N	N	OP	Has been done only occasionally upon request.
KENTUCKY	S,R	OP	N	Generally; we have on request assisted local governments on specific buys.
LOUISIANA	S	S,OP	Y(1)	Informally, upon request.
MAINE	S	OP	OP	Upon request.
MARYLAND	S,R	OP	OP	We respond to all requests from local government. Local governments may "piggy-back" state commodity contracts at their option (not mandatory). Some local government charters prohibit participation.
MASSACHUSETTS	S	OP	N	
MICHIGAN	S	OP	OP	
MINNESOTA	S	S	Y(1)	Upon request.
MISSISSIPPI	Y(1)	N	Y(1)	This Purchase Division has the responsibility to act in an advisory capacity in those areas. Referenced above.
MISSOURI	S	S	Y(1)	All services of the Division of Purchasing are available to local governments upon their request.

TABLE 13 (Continued)

STATE	Legal Basis for Cooperative Purchasing by Central Purchasing to Other Units of Government	Legal Basis for Written Agreements by Parties Involved in Cooperative Purchasing	Legal Basis for Assisting Local Governments with Mailing List and Similar Information	Criteria
MONTANA	S	N	OP	Specifications and mailing lists are informally provided upon request of local governments.
NEBRASKA	S	N	Y(1)	Upon request only.
NEVADA	S	S	Y(1)	Done on request. All entities of the state including school districts use the facilities of this division on a voluntary basis.
NEW HAMPSHIRE	S	N	S	Upon request only.
NEW JERSEY	S	R	S	Upon request only.
NEW MEXICO	S	OP	Y(1)	Local governments are assisted informally, only upon request.
NEW YORK	S	Y(1)	S,OP	To extend feasible - we do not, however, write individual contracts for each subdivision on non-term contract items.
NORTH CAROLINA	S	R	Y(1)	Only upon request and unofficially. Participation is currently limited to purchasing from term contracts.
NORTH DAKOTA	N	Y(1)	Y(1)	Only to the extent of furnishing copies of awards to political subdivisions of those vendors who will sell at contract prices.
OHIO	S	S	OP	Only upon request and is very informal.
OKLAHOMA	S	N	S,R	We send list of our state contracts to 200 cities annually and they tell us which contracts they want. Otherwise we assist upon request, requisitions, letters, etc.
OREGON	S	OP	OP	Upon request.
PENNSYLVANIA	S	S	N	
RHODE ISLAND	S	N	Y(1)	Upon request.
SOUTH CAROLINA	S	S	S	Upon request limited technical services and information, and many charge fees for services provided.
SOUTH DAKOTA	S	OP	S	Central Bid Exchange set by statute. Local Units may buy off of State Contracts if they meet the requirement of SDCL 5-18-18.
TENNESSEE	S	N	S	Local governments, upon request, are sent copies of statewide contracts. And, upon request, assistance is provided in areas of specifications, bid lists, special problems, vendor performance, procedures, etc. Procurement seminars for local governments are held across the state.
TEXAS	S	S	Y(1)	Only upon request.
UTAH	S	N	OP	State contracts are mailed on request to political subdivisions. We actively work in cooperation purchasing ventures with the political subdivisions. Specifications, bid lists, and assistance is provided upon request.
VERMONT	N	N/A	Y(1)	Upon request, we will put out to bid and issue special purchase orders for local governments.
VIRGINIA	S	N	OP	Informally, upon request.
WASHINGTON	S	S	OP	Through scheduled meetings and upon request.
WEST VIRGINIA	S	N	Y(1)	A coordinator has been appointed to assist local governments with procurement problems and advice as well as supplying requested contracts available to them.
WISCONSIN	S	N	OP	Done on request.
WYOMING	S	OP	Y(1)	In the "Call for Bids" we have included a statement that this bid is not only for the State of Wyoming, but also for all political sub-division within the state. The political sub-division then at their choice make purchases against the state contract. At the present time we have approximately 12 such contracts. Informally, we also provide requesting local governmental entities specifications, bidders' lists and any other information we have.

KEY: Y = Yes; N = No; S = Statute; R = Rule or Regulation; OP = Operating Procedure.
(1) Yes, but has no legal basis.
(2) No, but has legal basis.
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 14. Surplus Property

(105) Do you see a growing sentiment or trend in your state for central purchasing to have more supervision of agency inventories and surplus property?

(106) Are the proceeds from disposition of surplus personal property credited to the owning agency, or to a general fund?

TABLE 14

STATE	Increasing Central Purchasing Supervision of Agency Inventories and Surplus Property	Comments	Creditor for Surplus Personal Property Proceeds
ALABAMA	Y		Owning Agency(S)
ALASKA	N		General Fund(S)
ARIZONA	N		General Fund(S)
ARKANSAS	N		Owning Agency(S)
CALIFORNIA	Y		Owning Agency(S)
COLORADO	Y	Surplus property only.	Both - depending upon situation(R)
CONNECTICUT	Y	Surplus property only.	General Fund(R)
DELAWARE	Y	Surplus property.	If replaced in kind to owning agency, otherwise to general fund.(S)
FLORIDA	N		Owning Agency(S)
GEORGIA	N		General Fund and Owning Agency(S)
HAWAII	N		General Fund(S)
IDAHO	N		Owning Agency for purchase of like items after administrative costs
ILLINOIS	N		Proceeds go to agency in charge of surplus State property.(S)
INDIANA	Y		General Fund(S)
IOWA	Y		Can be either if agency has revolving fund authorization
KANSAS	N		Owning Agency
KENTUCKY	Y		Owning Agency
LOUISIANA	Y	Not in Purchasing.	General Fund(S)
MAINE	N		Both based on original funding(OP)
MARYLAND	N	This function supervised by Inventory Mgmt. Div.	General Fund(R)
MASSACHUSETTS	Y		General Fund(S)
MICHIGAN	N		General Fund unless department funds are restricted by statutes and surplus item has significant values, e.g., vehicles(OP)
MINNESOTA	Y		Owning Agency(S)
MISSISSIPPI	N		Varies with agencies
MISSOURI	N		General Fund or Special Funds as applicable(S)
MONTANA	N		General Fund, few statutory exceptions(S)
NEBRASKA	Y		Owning Agency (if cash or federal funds) otherwise to General Fund(S)
NEVADA	Y		General Fund, few statutory exceptions(S)
NEW HAMPSHIRE	Y		General Fund or Special Fund as applicable
NEW JERSEY	N		General Fund
NEW MEXICO	Y(1)		General Fund
NEW YORK	N		General Fund(OP)
NORTH CAROLINA	N		Budgeted items go back to agency; unbudgeted items go to equipment reserve funds
NORTH DAKOTA	Y		Owning Agency(S)
OHIO	N		Credited to fund from which items were originally purchased
OKLAHOMA	Y		To Agency(S)
OREGON			To Owning Agency (less fee)(S)
PENNSYLAVANIA	N		General Fund
RHODE ISLAND	Y		General Fund, except when federal or Board of Regents funding is involved
SOUTH CAROLINA	N		General Fund And Owning Agency(S,R)
SOUTH DAKOTA	N		Both, depending on source of funds
TENNESSEE	Y		Personal Prop. Utilization Division(S)

TABLE 14 (Continued)

STATE	Increasing Central Purchasing Supervision of Agency Inventories and Surplus Property	Comments	Creditor for Surplus Personal Property Proceeds
TEXAS	Y		Owning Agency(S)
UTAH	Y		To Owning Agency (less fee)(S)
VERMONT	Y		To Agency
VIRGINIA	N		General Fund, 50% of revenue is returned to owning agency
WASHINGTON	N		General Fund(2)(S)
WEST VIRGINIA	N		General Fund, some exceptions, but very few
WISCONSIN	Y		Generally Owning Agency(S)
WYOMING	Y		Owning Agency(R)

KEY: Y = Yes; N = No; S = Statute; R = Rule or Regulation; OP = Operating Proceeds

(1) Presently, we are looking at possible ways that would allow for the substitution of used for new as a normal course of the purchasing process.

(2) After deduction of fixed percent of revenue to cover program operating costs.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 15. Recommended Central Purchasing Improvements

(107) What single change or improvement do you think would be of most benefit to your central purchasing program?

TABLE 15

STATE	The Single Change or Improvement that Most Benefits the Central Purchasing Program
ALABAMA	To become more automated with use of computers. To have more annual contracts. To allow using agencies to releases purchase orders against contracts on an on-line basis.
ALASKA	Increased staff. On-line network computerized purchasing system.
ARIZONA	On-line, network computerized purchasing system.
ARKANSAS	Increased automation.
CALIFORNIA	Implementation of an on-line, computerized materials service and inventory management program, and use of electronic mail for transmitting purchasing documents.
COLORADO	Increased automation.
CONNECTICUT	Review of all purchase orders and direct purchase orders by Central Purchasing before they are forwarded to the vendor. This would require computer capabilities.
DELAWARE	Our program is not mandatory; the statute says we may inaugurate a system of central purchasing for state agencies and local governments and volunteer fire departments desiring to participate. We would like to see it made mandatory for state agencies.
FLORIDA	Legislative (funding) support for implementation of complete mechanization program.
GEORGIA	Increased usage of schedule buys and contracts in order to take advantage of the state's purchasing power.
HAWAII	Rewrite statutes on expenditure of public monies.
IDAHO	Increased funding for additional personnel to add quality to the purchasing function and management support for increased use of standardization in specifications.
ILLINOIS	To be exempt and free of political influence in hiring, and be more adequately funded to centralize more purchasing functions. More staff.
INDIANA	Automation of the Procurement Division has already begun, but I see the completion of this project as being a great benefit.
IOWA	More legislative support to allow State Purchasing to function in a professional and efficient manner.
KANSAS	Automation, which begins in FY 88.
KENTUCKY	Computerization and restricting the central staff organization.
LOUISIANA	Complete automation of purchasing function.
MAINE	Computerization.
MARYLAND	Revision of new procurement law and the rules and regulations due to be implemented 7/1/87 will permit our servicing using agencies on a timely basis. Elimination of reporting procedures would allow buyers more time to buy and develop an expertise for the commodities they purchase. Automation of central purchasing operations using packaged software will improve services.
MASSACHUSETTS	Authority to negotiate.
MICHIGAN	Promulgation of administrative rules and upgrade of existing automated purchasing system.
MINNESOTA	In-depth study and modification of statutes and rules to allow for more flexibility and modernization of procurement process.
MISSISSIPPI	Computerization.
MISSOURI	Stronger support by the Legislative branch for fair competitive purchasing practices without undue influence by special interest group.
MONTANA	Fully automated bid tabulation spread sheet.
NEBRASKA	A computerized vendor list. Increased funding for adequate staffing to develop more contracts, monitor commodity changed, etc.
NEVADA	Nevada has an extremely strong and workable "Purchasing Act" within the statutes and the Legislature is very cooperative in making necessary changes. Therefore, I do not think major changes need to be made and consequently, no single change would be of any great benefit.
NEW HAMPSHIRE	Automated purchasing.
NEW JERSEY	The implementation of a computerized purchasing information management system integrated with the State's Appropriation Accounting which allows using agencies to process purchase orders on-line and acts as a management tool for the monitoring of procurements.
NEW MEXICO	Funding to allow for full automation of our purchasing system. Presently, we are running at 80%.
NEW YORK	Increased funding for enhancement of our computerization program.
NORTH CAROLINA	Completion of automation program, currently underway, including agency network.
NORTH DAKOTA	Authority along with responsibility.
OHIO	Automation, computerize bid result process, purchase order process, etc.
OKLAHOMA	Make director merit system employee. Executive Branch back up authority of purchasing director as provided by statute. Agencies like to spend their own budgets - we need more buyers and specification personnel - good computerization would help.
OREGON	Resources for more staff development, seminars, open houses. More positions to do career laddering for purchasing staff.
PENNSYLVANIA	Complete automation of the purchasing system.

TABLE 15 (Continued)

STATE	The Single Change or Improvement that Most Benefits the Central Purchasing Program
RHODE ISLAND	Computerization program.
SOUTH CAROLINA	Refinement of Procurement Code and Regulations which were implemented August 1, 1981.
SOUTH DAKOTA	Computerization - better base salary.
TENNESSEE	Strengthen or increase staff in effectiveness of overview of delegated purchases.
TEXAS	Additional funding to further upgrade existing ADP system so that electronic transfer of data can be increased between purchasing and the user agencies.
UTAH	Increased funding would allow us to be more adequately staffed to develop improved contracts, assist agencies better, and save the taxpayers more.
VERMONT	Implementation of an automated procurement system currently being developed.
VIRGINIA	Automation has been completed. A formalized training program will be initiated by a full time manager. This program along with the automation program will substantially support decentralization initiatives.
WASHINGTON	Adequate funding for development/implementation of automated purchasing management information system to facilitate centralized procurement activities.
WEST VIRGINIA	Automated computer purchase system.
WISCONSIN	Automated computer purchasing system.
WYOMING	Automated Purchasing system.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 15A. Purchasing Manual Practices

(108) Does central purchasing now have, or is it actively developing a Policy, Rules and Regulations or Administrative Procedures Manual?

(109) Does central purchasing now have, or is it actively developing an Operations, or Internal Procedures Manual?

(110) Does central purchasing have now, or is it actively developing a Vendors' (or "How to do Business With") Manual?

TABLE 15A

STATE	Legal Basis for the Development of an Administrative Procedures Manual	Legal Basis for the Development of an Operations or Internal Procedures Manual	Legal Basis for the Development of a Vendors' Procedures Manual
ALABAMA	OP	OP	OP
ALASKA	R/OP	OP	OP
ARIZONA	R	OP	OP
ARKANSAS	S	N	N
CALIFORNIA	OP	OP	N
COLORADO	S	N	Y(1)
CONNECTICUT	OP	N	OP
DELAWARE	N	N	N
FLORIDA	R	OP	OP
GEORGIA	OP	OP	OP
HAWAII	N	OP	OP
IDAHO	S	OP	OP
ILLINOIS	S	OP	N
INDIANA	Y(1)	Y(1)	Y(1)
IOWA	R	OP	OP
KANSAS	OP	OP	OP
KENTUCKY	Y(1)	Y(1)	N
LOUISIANA	S	OP	OP
MAINE	S	OP	OP
MARYLAND	OP	OP	OP
MASSACHUSETTS	OP	OP	OP
MICHIGAN	R	Y(1)	Y(1)
MINNESOTA	OP	N	S
MISSISSIPPI	Y(1)	Y(1)	Y(1)
MISSOURI	OP	OP	OP
MONTANA	R	R/OP	OP
NEBRASKA	S	OP	OP
NEVADA	R	N	N
NEW HAMPSHIRE	R	N	Y(1)
NEW JERSEY	OP	R/OP	R/OP
NEW MEXICO	Y(1)	Y(1)	Y(1)
NEW YORK	S	OP	OP
NORTH CAROLINA	Y(1)	Y(1)	Y(1)
NORTH DAKOTA	R	OP	OP
OHIO	R	OP	OP
OKLAHOMA	S/R/OP	Y(1)	Y(1)
OREGON	R/OP	OP	OP
PENNSYLVANIA	Y(1)	Y(1)	Y(1)
RHODE ISLAND	OP	OP	OP
SOUTH CAROLINA	Y(1)	S	OP
SOUTH DAKOTA	OP	OP	OP
TENNESSEE	S	Y(1)	Y(1)
TEXAS	OP	OP	OP
UTAH	S,R	OP	OP
VERMONT	OP	OP	OP
VIRGINIA	OP	OP	R
WASHINGTON	S	S	OP
WEST VIRGINIA	OP	OP	OP
WISCONSIN	OP	OP	OP
WYOMING	S	OP	N

KEY: Y = Yes; N = No; S = Statute; R = Rule or Regulation; OP = Operating Procedure
(1) Yes, but not by legal basis.
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 15B. Managerial Role and Professional Affiliations

(111) Is there a statement in statute, rules or regulations or administrative procedures which affirms a management role for central purchasing?

(112) Does your personnel office place special weight on professional purchasing certification in job descriptions or recruiting announcements?

(113) What professional associations does your central purchasing program actively participate in? Please list.

TABLE 15B

STATE	Legal Basis for Affirmation of Managerial Role for Central Purchasing	Legal Basis for Requiring a Professional Purchasing Certification	Professional Associations
ALABAMA	N	N	NASPO
ALASKA	S	N	NASPO, NIGP
ARIZONA	S	N	NASPO, NPI, NIGP
ARKANSAS	S	N	NASPO, NIGP, NAPM
CALIFORNIA	S	N	NASPO, NIGP, NAPM, CAPPO
COLORADO	S	N	
CONNECTICUT	R	N	NIGP, NASPO, CPPA, CAPM
DELAWARE	N	N	NASPO, NIGP
FLORIDA	S	N	NIGP, FAGPO, NASPO, ASPA
GEORGIA	S	N	NASPO, NIGP
HAWAII	N	N	NASPO, NIGP
IDAHO	S	N	NAPM, NIGP
ILLINOIS	Y(1)	N	NASPO, NIGP, IAPPO
INDIANA	S	N	
IOWA	N	Y(1)	NASPO, NIGP, NAPM
KANSAS	S	N	NASPO, NIGP
KENTUCKY	S/R	N	
LOUISIANA	S	N	NIGP, NAPM, CANIGP, GBRAPM, NASPO
MAINE	S	N	NASPO, ASTM, Maine Graphic Arts Association
MARYLAND	N	OP(2)	NIGP, NAPM, MPPA
MASSACHUSETTS	R(2)	N	NASPO
MICHIGAN	S/OP	N	NAPM, MPPOA
MINNESOTA	S	OP(2)	NIGP, NASPO
MISSISSIPPI	N	Y(1)	
MISSOURI	Y(1)	N	NASPO, NIGP, NAPM
MONTANA	OP	N	NASPO, NIGP
NEBRASKA	S	N	NASPO, NIGP, NAPM
NEVADA	S	N	
NEW HAMPSHIRE	S	N	NAPM
NEW JERSEY	S	N	NIGP, GPA, AGA, NASPO, ASPA
NEW MEXICO	S	N	NCMA, NIGP, NASPO
NEW YORK	S	N	NASPO, PMA, NIGP
NORTH CAROLINA	S	N	NASPO, NIGP
NORTH DAKOTA	S	N	
OHIO	R	N	NASPO
OKLAHOMA	S	N	NASPO, NIGP, NAPM
OREGON	S/OP	N	NIGP, OPPA
PENNSYLVANIA	S	N	
RHODE ISLAND	S	N	
SOUTH CAROLINA	S	N	NASPO, NIGP, SCAGPO
NORTH DAKOTA	S	N	NASPO, NIGP
TENNESSEE	R	N	NASPO, NIGP
TEXAS	N	OP(2)	NASPO, NIGP
UTAH	S	Y(1)	NASPO, NAPM, PMAU, USDC
VERMONT	S	N	Purchasing Managers Association of VT, NASP Regional Meetings
VIRGINIA	S	N	NAPM, NIGP, VAGP
WASHINGTON	S	N(3)	NAPM, NASPO, NIGP
WEST VIRGINIA	S	N	
WISCONSIN	S	N	NASPO, NIGP
WYOMING	S	N	NIGP, NASPO

KEY: Y = Yes; N = No; S = Statute; R = Rule or Regulation; OP = Operating Procedure
(1) Yes, but has no legal basis.
(2) No, but has legal basis.
(3) Job specifications being revised to incorporate preference for professional purchasing certification.
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 16. Salaries and Grade Ranges of Central Purchasing Directors

(114) Please list the salary and grade range of the Director in your purchasing office.

TABLE 16

STATE	Salary	Salary or Grade Range
ALABAMA	$ 1,543-2,345*	Step 1-18
ALASKA	5,990**	26
ARIZONA	60,300	42 - 60,300
ARKANSAS	43,992	27,872 - 43,992
CALIFORNIA	Deputy Dir, Procurement	4,899 - 5,391**
	Purch. Manager	4,054 - 4,456**
COLORADO	43,632 - 58, 464	10 Steps
CONNECTICUT	51,848 - 63,487	Exec. Level 5
DELAWARE	40,000	
FLORIDA	1,615-2,577*	
GEORGIA	60,000	(b)
HAWAII	38,000	EM-05
IDAHO	16.56	15.02-20.13
ILLINOIS	Manager, Procurement Division	2,647-4,123
INDIANA	40,716	ESM III
IOWA	44,000	36,998 - 46,800
KANSAS	47,496	36
KENTUCKY	32,916-50,004	17
LOUISIANA	3,484 - 5,227	26
MAINE	36,004 - 52,769	88
MARYLAND	46,659	20
MASSACHUSETTS	1,049.18/wk.	M10, 7 Steps
MICHIGAN	69,785	State Exec. II
MINNESOTA		
MISSISSIPPI	31,223-46,752	
MISSOURI	46,523	
MONTANA	Administrator, 38,577	18
NEBRASKA	Administrator, est.35,000 - 42,000	appointed position
NEVADA	Vacant	
NEW HAMPSHIRE	46,375	36,166 - 46,375
NEW JERSEY	N/A	
NEW MEXICO	45,000	exempt position
NEW YORK	56,227-71,165	mV
NORTH CAROLINA	63,768	40,752 - 66,888
NORTH DAKOTA	State Pur. Agent is Dir. of Acc. Operations	
OHIO	State Pur. Admministrator, 45,095	15
OKLAHOMA	48,300	Exempt
OREGON	Administrator, 47,000	M32
PENNSYLVANIA	34,152 - 46,083	50
RHODE ISLAND	42,475-48,485	
SOUTH CAROLINA	State Procurement, 37,549 - 53,223	46
SOUTH DAKOTA		28,163 - 42,224
TENNESSEE	2,491-3,702**	
TEXAS	45,300	Exempt
UTAH	43,000	33,000-48,000
VERMONT	Appointed	N/A
VIRGINIA	64,000(a)	47,000 - 64,000
WASHINGTON	39,000-50,000	67
WEST VIRGINIA	40,000	
WISCONSIN	51,000	1-20
WYOMING	41,141.64	73

KEY:
* Bi-weekly
** Monthly
(a) Current, projected to increase 7/1/87 to $67,000 - Range $51,000-70,000
(b) Set by Commissioner of Department
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 16A. Salaries and Grade Ranges of Central Purchasing Officials

(115) Please list the salaries and grade ranges of the Deputy Director or Senior Buyer in your purchasing office.
(1) Deputy Director
(2) Senior Buyer
(3) Other

TABLE 16A

STATE	Salary	Salary or Grade Range
ALABAMA	$ 921 - 1,397*	Step 1-18
ALASKA	5,380**	23
ARIZONA	48,000	35 - 50,000
ARKANSAS	32,266	21,500 - 33,930
CALIFORNIA	Prin. Buyer(3)	2,768 - 3,339**
COLORADO	42,684 - 57,204(1)	
CONNECTICUT	41,708 - 51,194	M.P. 65
DELAWARE	$33,000	
FLORIDA	1,577 - 2,500*	
GEORGIA	42,000	33,000 - 53,000
HAWAII	22,000	SR-24
IDAHO	13.29	12.66 - 16.97
ILLINOIS	Buyer III(3)	2,006 - 3,012
INDIANA	27,352	ESM VII
IOWA	36,000	29,265 - 37,055
KANSAS	38,148(1)	31(1)
KENTUCKY	Assistant Dir.(3), 24,552 - 39,336	14
LOUISIANA	3,043 - 4,565	24
MAINE	25,604 - 35,796	29
MARYLAND	40,000(1)	18
MASSACHUSETTS	459.75/wk	19, 5 Steps
MICHIGAN	58,700	Adm. Mngr. XII
MINNESOTA		
MISSISSIPPI	Senior Analyst(3)	26,882-40,260
MISSOURI	Section Chief(3), 32,328 - 442,084	32
MONTANA	Bureau Chief(3), 30,548	16
NEBRASLA	Deputy Administrator(1), 30,180 - 40,240	17
NEVADA	Assistant Admin.(3),26,641 - 36,307	37
NEW HAMPSHIRE	Administrator(3), 34,554	28,977 - 34,554
NEW JERSEY	N/A	
NEW MEXICO	49,500	13
NEW YORK	Assistant Director(3), 45,696-57,871	mIII
NORTH CAROLINA	35,460 - 57,924(1)	
NORTH DAKOTA		
OHIO	43,491(2)	12
OKLAHOMA	38,000(1)	Exempt
OREGON	Deputy Admin.(3), 39,000	M29
PENNSYLVANIA	24,841 - 33,819	43
RHODE ISLAND	34,659 - 39,160	
SOUTH CAROLINA	28,534 - 40,443(2)	39
SOUTH DAKOTA		22,526 - 33,800
TENNESSEE	1,406-2,089**	
TEXAS	36,000	21
UTAH	26,000(3) (Pur. agent with 10 yrs. experience)	19,000 - 28,000
VERMONT	22,984 - 36,150	N/A
VIRGINIA	$49,000	$36,000 - 49,000
WASHINGTON	36,000 - 46,000	64
WEST VIRGINIA	34,000	
WISCONSIN	43,000	1-17
WYOMING	33,736.92	65

KEY:
* Bi-weekly
** Monthly
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 16B. Salary and Grade Range of Central Purchasing Journeyman Buyer

(116) Please list the salaries and grade ranges of the Journeyman Buyer in your purchasing office.

TABLE 16B

STATE	Salary	Salary or Grade Range
ALABAMA	$ 738 - 1,119*	Step 1-18
ALASKA	4,074**	18
ARIZONA	Varies	26,000 - 38,000
ARKANSAS	19,983	12,900 - 28,860
CALIFORNIA	Assoc. Mat Analyst	2,641 - 3,187**
	Buyer II	2,407 - 2,902**
	Buyer I	1,912 - 2,298**
COLORADO	32,556 - 43,632	
CONNECTICUT	27,646 - 33,691	AR 23
DELAWARE	$20,000	
FLORIDA	675-1,114*	
GEORGIA	32,000	25,000 - 39,000
HAWAII	17,000	SR-18
IDAHO	11.20	10.67-14.30
ILLINOIS	Buyer II	$1,904-2,492
	Buyer I	$1,656-2,133
INDIANA	$17,030	Pat IV
IOWA	25,000	23,920 - 29,973
KANSAS	30,612 - 23,424	27, 25, 22
KENTUCKY	12,408-32,376	7-12
LOUISIANA	1,895 - 2,843	17
MAINE	16,619 - 22,276	19
MARYLAND	29,552	14
MASSACHUSETTS	379.81/wk	15, 5 Steps
MICHIGAN	36,100	Buyer VII
MINNESOTA		
MISSISSIPPI	Analyst, 18,033-32,977	I-III
MISSOURI	Buyer I - IV, 17,436 - 38,532	17-30
MONTANA	22,190	13
NEBRASKA	Buyer I	10 18,192 - 24,256
	Buyer II	12 21,023 - 28,031
	Buyer III	14 24,295 - 32,393
NEVADA	Senior Buyer, 23,430 - 31,766	34
NEW HAMPSHIRE	Contract Administrator	16,009 - 18,739
NEW JERSEY		
NEW MEXICO	28,000	8
NEW YORK	Purchasing Officer, 26,354 - 42,185	G18-G23
NORTH CAROLINA	23,592-38,004	
NORTH DAKOTA	1,900-2,600	24
OHIO	24,941	30
OKLAHOMA	Buyer II, 24,192	Buyer I, 21,420
OREGON	31,000	24
PENNSYLVANIA	20,147 - 27,169	38
RHODE ISLAND	21,832-25,215	
SOUTH CAROLINA	22,549 - 31,962	33
SOUTH DAKOTA		16,016 - 24,044
TENNESSEE	1,287-1,914**	
TEXAS	34,000	19
UTAH	Pur. agent with 2 yrs. experience, 20,000	19,000 - 28,000
VERMONT	19,676 - 30,800	N/A
VIRGINIA	29,000(a)	23,000 - 31,000
WASHINGTON	Journey Level, 21,500-27,500	43
WEST VIRGINIA	Junior Buyer, 13,000	
WISCONSIN	33,000	1-16
WYOMING	21,610.80	47

KEY:
* Bi-weekly
** Monthly
(a) Meaning or definition unclear. Virginia Buyer salary for purposes of this review is for Buyer C mid to upper salary range.
SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 17. Preference Policies: Products, Set Asides and Practices

(117) Update the following information on preferences for products, set aside programs and other preference practices in your state.

TABLE 17

STATE	Any Prohibitions or Preferences?	All Items	Steel	Autos	Meat	Coal	Other Products
ALABAMA	Yes	No	Ala Code 23-1-159				
ALASKA	Yes	Yes			Yes		Agriculture
ARIZONA	No						
ARKANSAS	Yes	Yes					
CALIFORNIA	Yes	No		Gov't Code S13332.09			Recycled paper-Public Contract Code 10392
COLORADO	Yes	No		No		No	
CONNECTICUT	No						
DELAWARE	No						
FLORIDA	Yes						
GEORGIA	Yes	No			X Beef O.C.G.A. 50-5-81		
HAWAII	No						
IDAHO	Yes	No					
ILLINOIS		No	Yes	No	No	Yes	No
INDIANA	Yes	Yes, General Preference except for coal & steel	X IC 5-16-8			X, IN Statutes 5-17-3	
IOWA	Yes	Yes					
KANSAS	No						
KENTUCKY	Yes						
LOUISIANA	Yes	No	Yes	No	Yes	No	Have 5% preference for products manufactured, processed or grown in
MAINE	Yes						
MARYLAND	Yes	No	X 21 M.C.A. §8-701 et seq.				
MASSACHUSETTS	Yes	Yes General Preference M.G.L.A. Ch. 7 §22(17)					
MICHIGAN	Yes	No					Printing PA 153 of 1937
MINNESOTA	Yes						
MISSISSIPPI	No						
MISSOURI	Yes					X RSMO 34.080	
MONTANA	Yes	Yes					
NEBRASKA	No						
NEW HAMPSHIRE	No						
NEW JERSEY	Yes						

TABLE 17 (Continued)

STATE	Any Prohibitions or Preferences?	All Items	Steel	Autos	Meat	Coal	Other Products
NEW MEXICO	No						
NEW YORK	Yes	No					X certain food products grown and processed in NYS (Ch.710 of Laws of 1985)
NORTH CAROLINA	No						
NORTH DAKOTA	No						
OHIO	Yes	Yes	Yes B.O.R.S. 153.011		By Ohio		
OKLAHOMA	Yes	No			X O.R.S. 90.6		
OREGON	No						
PENNSYLVANIA	Yes	No	X 73 P.S. §1881 et seq.	X 73 P.S. §1891 et seq.			
RHODE ISLAND	Yes	No	X General Laws Ch. 37-2.1-1				
SOUTH CAROLINA	Yes	Yes					
SOUTH DAKOTA	Yes	No			Buy American	Dairy 5%	
TENNESSEE	Yes	Tie bids		In-state	In-state		
TEXAS	Yes	Yes Tie Bids Only. Art. 601 b §3.28 V.T.C.S.					
UTAH	Yes Preference	No Equal to	No	No Preference	No Provided	No By the	No Other State
VERMONT	No						
VIRGINIA	Yes	No				4% for VA mined coal expires 7/1/89	
WASHINGTON	Yes	No	No	No	No	Yes - In-state coal only	No
WEST VIRGINIA	Yes	No	X 5A-19-2				
WISCONSIN	Yes	Yes United States General preference W.S.A. 16.72 (2) (c)					
WYOMING	Yes	Yes WS 16-6-102, 16-6-105, 16-6-106, 16-6-301			X W.S. 9-2-1016		

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 17A. Preference Policies: Products, Set Asides and Practices

(117) Update the following information on preferences for products, set aside programs and other preference practices in your state.

TABLE 17A

STATE	Minorities	Vocational or Prison Industries	Small Business	Other Set Asides (List)	Reciprocity Practices (Describe)
ALABAMA		Yes		Tie bids	In-kind
ALASKA		Yes		A.K. products	No
ARIZONA		Prison Industries			
ARKANSAS	10% Goal	Mandatory if Prison Produced			
CALIFORNIA		Penal Code 2807	Gov't Code 14838	Preference for work performed in distressed areas, hiring of the high-risk unemployed. Gov't Code 4530 et. seq.	
COLORADO	No	Yes	No		Yes - equal to preference of other state
CONNECTICUT	N/A				
DELAWARE	N/A				
FLORIDA	15% Goal	Chapter 946.15 FS Prison Industry			
GEORGIA	N/A				
HAWAII	N/A				
IDAHO		IC 67-2319			IC 67-2349
ILLINOIS	Yes	Yes	Yes	Female Handicapped	Will apply same preference against an out-of-state vendor that that state applies against IL vendors
INDIANA		Rehabilitation IC 16-7-17 Prison Industry IC 11-10-6-4	X IC 4-13-13.5		
IOWA	X	X	X	WBE	Reciprocal with other states
KANSAS	N/A				
KENTUCKY	X	X	X	X	Preference by law- No established amount by either dollar or percent number
LOUISIANA	Yes	Yes	Yes	Women Disabled	Reciprocal
MAINE				Maine center for the Blind, Sheltered Workshops	Preference Law
MARYLAND	Tie bids to minorities	Yes	5% price preference	Blind industries and sheltered workshops	Same % is added to out-of-state bid for bid evaluation
MASSACHUSETTS	N/A				
MICHIGAN	7% MBE 5% WBE PA 428 of 1980	MI State Industries PA 245 of 1980		Sheltered workshops PA 431 of 1984	None
MINNESOTA	5%			5% L.S.A.	Yes - equal to amount applied against MN vendor

TABLE 17A (Continued)

STATE	Minorities	Vocational or Prison Industries	Small Business	Other Set Asides (List)	Reciprocity Practices (Describe)
MISSISSIPPI	N/A				
MISSOURI		X RSMO 34.090		Also BuyAmerican Preference 10% price differential	X RSMO 34.076
MONTANA					5% MT made products 3% MT vendors or Preference used against MT vendors - whichever is higher
NEBRASKA		Prison Industries furniture-statute 81-145			Same % as State preference
NEVADA	N/A				
NEW HAMPSHIRE	N/A				
NEW JERSEY	NJSA 52: 32-17 7% minority business enterprises		NJSA 52: 32-17 15% small business enterprises		NJSA 52:32-1.3-5
NEW MEXICO	N/A				
NEW YORK	N/A				
NORTH CAROLINA				None	
NORTH DAKOTA	N/A				
OHIO	MBE	State use Law Penal Industry & Handicapped Industries	No	If more restriction than 5% B.O. Preference	
OKLAHOMA	N/A				
OREGON	N/A				
PENNSYLVANIA	N/A				
RHODE ISLAND	N/A				
SOUTH CAROLINA	Yes, designate to minorities only				
SOUTH DAKOTA	N/A				
TENNESSEE		Yes	Yes		
TEXAS					Reciprocal Law HB620 (Art. 601g VTCS)
UTAH	No	Yes	No		63-56-20.5 Reciprocal
VERMONT	N/A				
VIRGINIA	N/A				
WASHINGTON	Yes - 5%	Yes - 10%	No	Handicapped - exempt from competitive bid. Negotiated contracts at fair market price.	
WEST VIRGINIA	N/A				
WISCONSIN	Yes, 5% over lox bid preference W.S.A. 16.75 (3M)	Yes, right of first refusal W.S.A. 16.75 (3t)(a)	Yes, general preference W.S.A. 16.75 (1)(a)	Sheltered work-shops 2% over low bid preference W.S.A. 16.75 (35)(a)	Printing-no printing contract to a state that discriminates against WI printers W.S.A. 35-012
WYOMING	N/A				

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 18. In State Preference Laws

(118) Update the following information on in state preference buying laws or practices in your state.

TABLE 18

STATE	Bidders	% Preference	Products	% Preference
ALABAMA	No		No	
ALASKA	Yes, Alaska Stat. §630.170	5%	Yes	5% to 7%, by Statute
ARIZONA	No			
ARKANSAS	Yes, Ark. Stat. Ann. §14-293,294	5% (15% against out-of-state correctional institutions)	No	
CALIFORNIA	No*		No	
COLORADO	No		No	
CONNECTICUT	Yes	15% of state contracts set aside to CT. Small businesses 25% of above 15% to CT minority small businesses	No	
DELAWARE	No		No	
FLORIDA	No		No	
GEORGIA	No		Yes, GA Forest Products only OCGAC 50-5-63	Exclusive Use of Forest Products
HAWAII	No		Yes, H.R.S 103-42 through 48	3%, 5% or 10%
IDAHO	No		No	
ILLINOIS	No		Steel, Coal	
INDIANA	No		Yes, Indiana coal I.C. 5-17-3	Institutions required to use state coal
IOWA	Yes	5% targeted small business	No	
KANSAS	No		No	
KENTUCKY	No		No	
LOUISIANA	No		Yes, L.R.S. 39:1595	5% Products produced, manufactured or grown in state
MAINE	No		No	
MARYLAND	No		No	
MASSACHUSETTS	Yes, 7 MGLA §22 (17) and 802 CMR 2.00:(16)	2%	Yes, 7 MGLA §22 (17) and 802 CMR 22.00:(16)	2%
MICHIGAN	No		No	
MINNESOTA	No		No	
MISSISSIPPI	No		No	
MISSOURI	No		Yes, Coal RSMO 1986 34.080	State Institutions must use state coal
MONTANA	Yes, M.R.C. 18-1-102	3%	Yes	5% for MT made products
NEBRASKA	No		No	
NEVADA	No		No	
NEW HAMPSHIRE	No		No	
NEW JERSEY	Yes, NJSA 52:32-17	15% of state contracts are set aside for NJ small businesses, 7% MBE, 3% WBE	No	
NEW MEXICO	Yes, N.M.S.A. 13-1-21,22	5%	Yes, N.M.S.A. 13-1-21,22	5%
NEW YORK	No		Yes, Certain Food Only. NYS Law 66024 B	3%, One Year Pilot Program
NORTH CAROLINA	No		No	
NORTH DAKOTA	No		No	
OHIO	Yes	5%	Yes, 1 B.O.R.C. §§125.11	Award tobidder offering goods produced or mined in Ohio if there is sufficient competition

TABLE 18 (Continued)

STATE	Bidders	% Preference	Products	% Preference
OKLAHOMA	No		Yes, 74 O.S.A. §85.32	5%
OREGON	No	There are bills pending in the legislature. To date, none have passed	No	Domestic steel bill just defeated by legislature
PENNSYLVANIA	No		No	
RHODE ISLAND	No		No	
SOUTH CAROLINA	(a) Yes, South Carolina Code11-35-1520	2% (under $2,500,000) 1% (over $2,500,000). No preference where price of single unit exceeds $10,000.00	Yes, 1986-87 Appropriations Bill Sec. 70	5% for SC made, manufactured, or grown end-products vs. other others states or foreign countries
	(b) 1985-86 Appropriations Bill, Sec. 16(4)	1½% in eligible counties from manufacturer or processor		2% for U.S. made, manufactured, or grown end-products vs. foreign countries or territories
SOUTH DAKOTA	No		No	
TENNESSEE	No		No	
TEXAS	No		No	
UTAH	No		No	
VERMONT	No		No	
VIRGINIA	No		No	
WASHINGTON	No		No	
WEST VIRGINIA	Yes	2%. 2 W.V.C. §5A-3-44	No	
WISCONSIN	No		No	
WYOMING	Yes	5%, W.S. 16-6-101 et seq.	Yes	5%, W.S. 16-6-101 et seq.

KEY:

* California does not have an in-state bidders preference. However, firms must be California-based to qualify for small business, distressed area, or high-risk unemployment preferences.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Table 18A. In State Preference Laws

(118) Update the following information on in state preference buying laws or practices in your state.

TABLE 18A

STATE	Printing	% Preference	Tie Bids	Reciprocal Law
ALABAMA	Yes, 22 Code of Alabama §41-4-139	Printing in Class 2(a), 2(b) or 4 must be done in the city of Montgomery	Yes, 22 Code of Alabama §41-16-27(c) and 57(b)	Yes
ALASKA	No		Yes, 2AAC 12	No
ARIZONA	No	No	No	
ARKANSAS	Yes	5%	Yes	No
CALIFORNIA	No		Yes, Policy	No
COLORADO	No		No	Yes, Construction and Commodities
CONNECTICUT	Yes, Public documents only C.G.S.A. §4-119	"Public Documents" must be printed in CT	Yes	No
DELAWARE	No		No	No
FLORIDA	No		Yes, Rule 13A-1.11	No
GEORGIA	No		Yes, OCGA 50-5, 60-61-62	No
HAWAII	Yes	15% H.R.S. 103-51	No	No
IDAHO	Yes	10% IC 60-101	Yes, Idaho 67-5718	Yes, but I.C 67-2349
ILLINOIS	No		No	Yes
INDIANA	No		Yes, Policy	No
IOWA	Yes	5% targeted small businesses	Yes, Iowa Code 73.1, 73.6, 18.3	Yes, §23.21 of Code of Iowa
KANSAS	No		Yes, K.S.A. 75-3740(b)	Yes, K.S.A. 75-3740(a) & (b)
KENTUCKY	No		Yes	No
LOUISIANA	Yes	5%	Yes, L.R.S. 39:1594 H	Yes, L.R.S. 39:1595.I
MAINE	No		Yes, Policy M.R.S. 15:1301	No, M.R.S. 8-301
MARYLAND	No		Yes, 21 REG 21.05.02.14	Yes, State finance and procurement 18-301
MASSACHUSETTS	Yes, 7 MGLA §22 (17) and 802 CMR 2.00:(16)	2%	Yes, 7 MGLA §22 (17) and 802 CMR 2.00:(16)	No
MICHIGAN	Yes, 2 M.S.A. §4.315	All printing must be done in Michigan	Yes, 2 M.S.A. §3.395	No
MINNESOTA	No		Yes	Yes, 16B.102 Sub. 1
MISSISSIPPI	No		Yes	Yes, 9 Miss. Code Anno. §31-7-47 and 31-7-15
MISSOURI	No		Yes RSMO 34.070	Yes, RSMO 1986 34.076
MONTANA	Yes, M.R.C. 18-7-103	3%	Yes, M.R.C. 18-1-102, 112; 18-5-307	Yes, only against bidders from states which use preferences against MT vendors, if that preference % is higher than MT preference
NEBRASKA	No		Yes, Rule 4(3) Dept. of Admin. Svc.	Yes, SS 73-101-01
NEVADA	No		Yes, NRS 333	No
NEW HAMPSHIRE	No		No	No
NEW JERSEY	Yes	Legislative Printing Only N.J.S.A. 52:36-3	Yes, NJAC 17:12-2.6	Yes, NJSA 52:32-1.3-5
NEW MEXICO	Yes, N.M.S.A. 13-1-21,22	5%	Yes, N.M.S.A. 13-1-11D	No
NEW YORK	No		Yes, Policy	Yes, Some Food Commodities NYS Law 6024 B
NORTH CAROLINA	No		Yes, N.C.S.G. §143-59	No
NORTH DAKOTA	No		Yes, Policy	Yes, N.D.C.C. 44-08-01
OHIO	Yes, 1 B.O.R.C. §125.56	Printing to be done in OH	No	Yes, for construction §153.012
OKLAHOMA	No		Yes, 69 O.S.A. §1101 & 61 O.S.A. §9 & 10	Yes, 74 O.S.A. 85.17
OREGON	Yes, 2 O.R.S. 282.210		Yes, 2 O.R.S. 279.021	No
PENNSYLVANIA	No		Yes, Policy	Yes, Act 146 of 1986 73 P.S. §1645.1 - 1645.8

TABLE 18A (Continued)

STATE	Printing	% Preference	Tie Bids	Reciprocal Law
RHODE ISLAND	No		No	No
SOUTH CAROLINA	No		Yes, South Carolina Code 11-35-1520 and 1-1-450-460	No
SOUTH DAKOTA	No		Yes, S.D.C.L. §5-23-13	Yes, S.D.C.L. §5-19-3
TENNESSEE	No		Yes, Rule 0690-3-1-11 (7)	No
TEXAS	No		Yes, Art. 601 b, V.T.C.S. §3, 28	Yes, House Bill 620 just enacted ART 601g VTCS
UTAH	No		Yes (operating procedure)	Yes, U.C.A. §63-56-20.5
VERMONT	No		Yes, For Agricultural Products. Title 6, Chapter 207, §4601	No
VIRGINIA	No		Yes, Section 11-47, Code of Virginia	Yes, Section 11-47, Code of Virginia
WASHINGTON	Yes, RCW 43.78.030		No	Yes, WAC 236.48.085
WEST VIRGINIA	No		Yes, §5A-3-44	Yes, §5A-3-45
WISCONSIN	No		Yes, 16.75 Wis. Stats.	No
WYOMING	Yes	10%, W.S. 16-6-101 et seq.	Yes, Policy	Yes, W.S.

SOURCE: November 1987 Survey by The Council of State Governments for The National Association of State Purchasing Officials.

Appendix A
Survey of Selected Procurement Practices of State Governments
National Association of State Purchasing Officials, November 1987

The 1987 Procurement Research Survey which follows represents the responses of the 50 state governments. The data is current through November of 1987. In several cases, intervening changes in law and procedure have rendered some of the specific information indicated obsolete. However, the general patterns are a good indicator of the current state of the art in state government purchasing practices.

The questions used in this survey correspond, for the most part, to the equivalent questions used in the 2nd Edition of "State and Local Government Purchasing", released in 1983. The two surveys included in the 2nd edition are based on responses received from the various states in 1981. The questions from the two surveys in the 2nd edition have been consolidated into one survey for the purposes of this text. In several cases, specific wording of the questions has been changed, making the responses to seemingly similar questions non-comparable. New questions have been added to examine new issues that have surfaced in the state purchasing community since the last survey was completed. As a result, there will be no comparable data for these new questions.

In comparing the results of the 1987 survey data with the 1981 survey data, many changes are evident suggesting a continuing evolution and further standardization in the purchasing practices of state government. The following comparative list highlights some of the more significant changes that have occurred since 1981, but is in no way meant to be an exhaustive examination of all changes that have occurred over the last six years in state purchasing practices.

- Four additional state central purchasing offices have indicated that they now issue purchase orders for a total of 29 states that currently issue purchase orders centrally. This echoes a continuing trend throughout the survey of a consistent move toward centralized state purchasing across the country.
- Six more states report that since the 1981 survey certain specific agencies have been exempted from the oversight previously provided by the central purchasing office. As a result, forty six states have certain agencies that are exempt from the central purchasing policies and procedures. The nature of the agencies exempted varies from state to state, but there are usually only a few agencies that fall outside of the purview of the central purchasing office. The most common exemption identified is for transportation agencies and institutions of higher education.
- Thirty six states, an increase of six from the previous survey, indicate that they have a legal basis for the existence of a computerized "Procurement Management Information System". This correlates to another significant trend identified in this survey: the explosive growth in data processing and a real impact on the administrative aspects of state purchasing as well as the buying workload.
- Consistent with the move to greater centralization of state purchasing responsibilities, eight states have reported the creation of statutes to support a centralized view of the state purchasing process.
- Seven additional states, from a base of twelve states, have noted the existence of statutes that provide a protest and appeal mechanism available to vendors when they are dissatisfied with the decisions of the purchasing process. This reflects a recognition that the state purchasing community must be more attuned to the needs and sensitivities of potential state vendors.
- Eight states have indicated that statutes have been passed within the last six years to direct the appropriate method to dispose of surplus state property. This means that 24 states currently function under statutory authority that guides the disposal of state surplus property.
- Six additional states, for a total of twenty states, have incorporated language in their purchasing statutes which allows them to use competitive negotiation through the Request for Proposal process to make purchases. This increased use of the Request for Proposal process goes hand in hand with a growth in the amount of contractual services being purchased through the state central purchasing offices.
- Sixteen states show a decreased reliance while twelve state show an increasing reliance on detailed design specifications. The remainder report that they have the same reliance on detailed design specifications as they have had for some time. Forty-one states report an increased use of performance, functional specifications, with only one state noting a decreased reliance on performance functional specifications. Fourteen states report an increase and ten states report a decrease in reliance on brand name or equal specifications. This changing basis for specification writing across the states suggests different specification procedures among the states. Although there is a strong move to greater use of performance functional specifications, some states continue to feel a need to use detailed design specifications. A broader view of the data implies that some states exert greater influence than others over the specification-writing process.
- Related to specification development, 22 states report an increasing reliance on the use of qualified products lists. Seven states report a decreased reliance on qualified products lists, and the remainder of states indicate no change from past practices in the use of qualified products lists.
- Five additional states, for a total of 38 states, use a contractual clause that allows for economic price adjustments at the point of contract renewal.

- A total of 41 states, or eight more states since the 1981 survey, indicate that use of the contracts issued by the central purchasing office is mandatory. This appears to be consistent with the move to more centralization in state purchasing practices.
- 42 states, an increase of eight states since the 1981 survey, report that they do not use the "most favored customer" clause in their purchasing process. Only three states indicate that they do use this concept, and one of those in a limited manner. This finding indicates a strong sense that most-favored-customer pricing is non-productive and undesirable.
- A strong increase in the use of multiple factors to determine the responsible low bidder is shown in the survey data. 44 states report that the frequency of considering elements such as supplies, parts, warranties, and maintenance costs is occurring much more often. These factors recognize that initial price is only one consideration in arriving at the most economical bid.
- A new question asked in this survey was whether the state requires a fee for a potential bidder to be placed on the appropriate state's bidder list. Seven states have indicated that they do require a fee for placement on a bidder's list. Typically, the fee offsets the administrative costs of maintaining the list, and the printing and mailing costs associated with bid distribution.
- Another new question deals with the issue of deleting inactive bidders from bidder's lists. Twenty states have indicated that they have a regular mechanism for deleting inactive bidders from their mailing lists. In usual practice in these states, failure to respond to two or more bids will see a bidder dropped from a bidder's list. This is done as a cost-reduction measure which eliminates the expense of postage and printing for bids sent to unresponsive recipients.
- Since 1981, seven more states have seen statutes passed that allow for a waiver of competitive bidding, given certain specific circumstances. This brings to 41 the states that have provisions to waive the bidding process for valid reasons.
- Ten additional states, for a total of 28 states, report that records are kept of the overall dollar amount spent through the state purchasing process.
- Two new questions added in this survey ascertain the progress that has been made in implementing automated administrative support systems that can track dollars spent by the number of units purchased. Twenty states report that they can track dollars spent by type of contract let. This suggests that twenty states have automated data processing systems to support their internal workload. Some of these systems track units of purchase as well as dollars spent.
- The survey results indicate a continuing growth in, and support for, the concept of cooperative purchasing. Seven more states since the last survey, for a total of 44 states, now have statutes that authorize cooperative purchasing programs. The scope and nature of these cooperative purchasing programs varies from state to state, but the concept of making state purchasing contracts available to local units of government is at the heart of these programs.
- Twenty five states indicate an increasing role by central purchasing in the supervision of agency inventories and the disposal of state surplus property.
- Twelve additional states report the addition of statutes to provide a basis for crediting surplus property proceeds. Some states strengthen their programs by returning the proceeds to the agency which is disposing of the equipment, while others continue to have proceeds revert directly to the state's general revenues.
- Finally, in response to the question of what single change or improvement would most benefit the central purchasing program, 34 states indicated that automation or improved automation of the purchasing process would be of significant benefit in their state. Other responses included more independence from the political structure of the state, a more professional approach to purchasing from state policy-makers, and increased staff resources to do a better job.

Appendix B
The National Institute of Governmental Purchasing
Results of the 1987 Procurement Survey "More Value for the Tax Dollar"

The NIGP Procurement Research and Technical Development Committee continued its practice of conducting an annual survey of NIGP members to gather data on their procurement policies, practices and procedures.

The 1987 NIGP Procurement Research Questionnaire was divided into eleven sections:

I. **Background information on Government Unit and Purchasing Organization:**
This section of the questionnaire recorded information regarding country, type of governmental unit jurisdiction, total employees in purchasing department, and the amount of money "spent" annually by the purchasing department.

II. **Organization:**
This section of the questionnaire recorded information regarding the structure, function, responsibility, and workload of the purchasing department.

III. **Personnel Qualifications, Salaries, and Authority:**
This section of the questionnaire recorded information regarding the minimum qualifications, salary ranges and spending authority of entry level buyers and the chief procurement officer. Additionally, it recorded information regarding the scope of responsibility and the method of selection of the chief procurement officer.

IV. **Preferences:**
This section recorded information on requirements for the following preferences: buy local, small business, handicapped, and buy American.

V. **Minority Business Enterprise:**
This section recorded information on requirements, programs and activities for encouraging and assisting minority businesses.

VI. **Sureties:**
This section recorded information on requirements for bid sureties, performance sureties, warranty sureties, and liquidated damages.

VII. **Formal Bidding:**
This section recorded information on requirements for formal bidding, advertising, and determining bidder qualifications.

VIII. **Small Purchases:**
This section recorded information regarding how small purchases are handled.

IX. **Miscellaneous:**
This section recorded information on four issues: South Africa resolutions, contracts for audit services, straight lease or third party leases for capital equipment and/or buildings, and central administrative vehicle programs.

X. **Additional Comments:**
This section provided respondents an opportunity to make additional comments.

XI. **Information I Would Like to See Covered in a Future Survey:**
This section provided respondents an opportunity to make recommendations for future surveys.

The questionnaire was distributed in January to members of the public purchasing community. Responses were received until March and evaluated and summarized. A summary of highlights and detailed tables are included in this report.

HIGHLIGHTS

Following are some highlights of the 1987 Procurement Research Survey, the details of which are shown in Tables 1 through 69 of this report. The returns have been stratified into ten jurisdictions; namely, city, county, city/county, town or village, state, providence, hospital, college, federal and authority or commission.

1. Survey respondents totaled 363. Ninety percent were from the United States, and 10% were from Canada. Nearly two-thirds (62%) of the respondents represented general local governments (cities, counties, city/counties, and towns or villages). Colleges, universities and educational institutions accounted for 12% of the responses; states and provinces for 6%; and authorities and commissions for 3%. (See Tables 1 and 2.)
2. The majority (64%) of respondents work in a jurisdiction with a population of less than 300,000, most of which are cities, towns and municipalities, fifteen percent of the respondents indicated a population of 200,000-999,999, 19% indicated 1 million and over population. (See Table 3.)
3. The majority (67%) of respondents indicate 2,500 or less employees in their jurisdiction. (See Table 4.)
4. The majority (66%) of respondents indicated that the total number of full-time employees in their purchasing unit is 10 or less, State government respondents indicate that the majority (56%) of their purchasing units have 21 or more employees. (See Table 5.)
5. The majority (68%) of respondents indicated that the number of full-time professional employees in their purchasing unit is four or less. (See Table 6.)
6. The majority (69%) of respondents indicated that their purchasing organization spends $5 million or more annually. A million dollars or less was spent by 8% of the respondents, and 2% spends under $250,000. (See Table 7.)

7. The majority (88%) of all respondents indicated centralized purchasing. (See Table 8.)
8. The majority of respondents indicated that their purchasing departments are responsible for printing (82%), stationary stores (79%), surplus (80%), inventory management (61%), central warehouse (62%), data processing (59%), construction (52%), and general services (71%). (See Table 9.)
9. The majority of respondents indicated that central purchasing has responsibility for equipment (92%), supplies (93%), general services (87%), construction (63%). Architects (34%) and engineers (34%) most frequently are bid by using agencies. (See Table 10.)
10. Over half (52%) of the respondents indicated they receive over 5,000 requisitions annually. The vast majority (93%) of all respondents indicated they receive at least 1,000 requisitions annually. (See Table 11.)
11. A majority (55%) of respondents indicated over 5,000 purchase orders issued annually, while 12% indicated over 20,000. (See Table 12.)
12. The average cost to issue a purchase order/contract ranges from $4.24 (federal government) to $103.68 (counties). Cities, which constituted the largest percentage of respondents, indicated an average cost of $39.99. (See Table 13.)
13. The majority (63%) of respondents require a high school level education plus work experience for their beginning level buyers. The average annual salary paid was reported to be over $17,500 by 51% of the respondents. The spending authority for beginning level buyers was indicated by the majority (64%) of the respondents to be less that $5,000, with 33% indicating less than $1,000. (See Tables 14, 15 and 16.)
14. The majority (63%) of all respondents indicated the Chief Procurement Officer had purchasing responsibility for commodities, construction and other services. (See Table 17.)
15. The minimum qualifications for Chief Procurement Officer most frequently indicated are: college education (70%), 4-6 years work experience (52%) and certification desirable (50%). Only 27% of the respondents reported that additional consideration is given job applicants with certification. Fifty-four percent of the respondents indicated that the Chief Procurement Officer is appointed and 75% indicated they agree with this method of selection. Since only 56% of the respondents to the Survey answered this question, it is assumed that 44% of the respondents had no opinion on this issue. (See Tables 18, 19, 20, 23, 25 and 26.)
16. Average annual salaries for the Chief Procurement Officer were reported to be over $30,000 by the majority (71%) of the respondents. Only 6% of the respondents reported that additional compensation is given for certification. (See Tables 21 and 22.)
17. The most frequently reported approval authority for the Chief Procurement Officer was unlimited (39%) and under $5,000 (29%). (See Table 24.)
18. The majority of respondents indicated that buy local preferences (63%), small business preferences (80%), handicapped preferences (84%), and buy American preferences (67%) are neither required or practiced. When practiced, the percent preference varies considerably. (See Tables 27 through 38.)
19. The majority (63%) of the respondents indicated that their jurisdictions have no legal requirement to assist minority businesses. The respondents reporting programs or activities show no pattern. (See Tables 39 and 40.)
20. Only 33% of the respondents indicated any type of administrative policy requirements to assist minority businesses. (See Table 41.)
21. Forty-eight percent of the respondents indicated that their jurisdictions have no programs or activities to assist minority businesses. The respondents reporting programs or activities show no pattern. (See Tables 42 and 43.)
22. Modified purchasing policies and practices to assist minority businesses were reported by 24% of the respondents. (See Table 44.)
23. Current efforts being made toward legislation to assist minority businesses was reported by 8% of the respondents. (See Table 45.)
24. Only a small percentage of respondents indicated a legal requirement for bid sureties for commodities (12%), services (14%), or construction (43%). When required, the value of bid sureties averaged 14% for commodities, 9% for services and 19% for construction. (See Tables 46, 47 and 48.)
25. Only a small percentage of respondents indicated a legal requirement for performance sureties for commodities (10%), services (12%) or construction (43%). When required, the value of performance sureties averaged 7% for commodities and services and 18% for construction. (See Tables 49, 50 and 51.)
26. The majority of respondents (70%) indicated that they do not use warranty sureties. (See Table 52.)
27. The majority of respondents (73%) indicated that they use liquidated damage provisions. (See Table 53.)
28. Sixty-six percent of the respondents indicated that formal bidding is required for contracts over $5,000. Formal bidding is reported to be a legal requirement by 55% of the respondents and to be an administrative policy by 25% of the respondents. (See Tables 54, 55 and 56.)
29. Sixty-nine percent of the respondents reported that they are legally required to advertise for bids. (See Table 57.)

30. Eighteen percent of the respondents indicated that they require bidder pre-qualifications and 16% require post-qualification. Fifty-six percent reported that they have an established formal bidders list. (See Table 58.)
31. The majority (70%) of the respondents indicated that they have a small purchases practice. Fifteen percent report that it is legally specified and 55% report that it is administrative policy. The majority (77%) of the respondents indicated that user agencies can not make purchases over $500, 40% indicated a limit less than $100 and 37% indicated a limit of $100 to $500. (See Tables 59 and 60.)
32. Only 4% of the respondents reported that their jurisdiction uses a "most favored customer clause" as a part of bid requirements and only 7% reported using a Qualified Products List or Acceptable Brands List. Less than half (49%) of the respondents reported that they consider a cash discount offered in a bid in evaluating bids. The commodity coding structure most frequently indicated (15%) was the NIGP Commodity Code System. (See Table 61.)
33. Only 14% of the respondents indicated that their jurisdiction has adopted a South Africa resolution or has one under consideration. The South Africa resolution provisions most frequently reported (48%) was a total ban on all trade with South Africa. (See Tables 62 and 63.)
34. The majority (72%) of respondents indicated that they contract for audit services. The procurement method most frequently reported was competitive sealed proposal. (See Tables 64 and 65.)
35. The majority (67%) of respondents indicated that they use straight leases or third party leases for capital equipment and/or buildings. Eighty percent of the respondents indicating straight or third party leases reported that they have a buy-out provision, 47% reported a fixed price guaranteed provision and 47% reported that maintenance is included. (See Tables 66 and 67.)
36. The majority (65%) of the respondents indicated that they have a centralized administrative vehicle program for vehicles and their maintenance. The cost allocation most frequently reported was either to have a separate budget (44%) or actual vehicle and maintenance costs are billed to the user (40%). (See Tables 68 and 69.)

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TABLE 1
Country of Origin
Section 1, Question A

	City		County		City/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
United States	122	89	62	96	9	90	21	87	24	96	0	0	19	100	39	82	6	85	14	100	11	84	327	90
Canada	15	10	2	3	1	10	3	12	1	4	3	100	0	0	8	17	1	14	0	0	2	15	36	9
Total	137	37	64	17	10	2	24	6	25	6	3	0	19	5	47	12	7	1	14	3	13	3	363	100

TABLE 2
Jurisdictions Responding to Survey, by Type
Section 1, Question B

Jurisdiction	# Reporting	% Responding
City	137	37
County	64	17
City/County	10	2
Town	24	6
State	25	6
Province	3	0
Hospital	19	5
College	47	12
Federal/Event	7	1
Authority	14	3
Other	13	3
Total	363	100%

TABLE 3
The Approximate Population of the Jurisdiction
Question: 1c

	City		County		City/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
5 Million & Over	3	2	0	0	0	0	4	16	5	20	2	66	0	0	0	0	3	42	2	18	2	18	21	6
1.0 - 4.9 million	2	1	12	18	1	10	6	25	14	56	0	0	2	20	2	4	1	14	3	27	2	18	45	13
300,000 - 900,000	19	13	15	23	0	0	1	4	4	16	0	0	0	0	9	20	2	28	3	27	1	9	54	15
100,000 - 299,999	23	16	16	25	3	30	0	0	0	0	1	33	2	20	9	20	0	0	1	9	4	36	59	17
50,000 - 99,999	41	30	16	25	1	10	3	12	0	0	0	0	2	20	8	18	0	0	2	18	0	0	73	21
Under 50,000	48	35	5	7	5	50	10	41	2	8	0	0	4	40	18	36	1	14	0	0	2	18	93	26
Total	136	100	64	100	10	100	24	100	25	100	3	100	10	100	44	100	7	100	11	100	11	100	345	100

TABLE 4
The Approximate Number of Full Time Employees
Question: 1d

	City		County		City/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Over 500,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	14	0	0	0	0	1	0
100,001 - 500,000	2	1	0	0	0	0	1	4	1	4	0	0	0	0	0	0	3	42	0	0	0	0	7	1
50,000 - 100,000	0	0	0	0	0	0	1	4	6	25	0	0	0	0	0	0	0	0	0	0	0	0	7	1
25,001 - 50,000	1	0	1	1	0	0	3	12	7	29	0	0	0	0	0	0	0	0	0	0	0	0	12	3
10,001 - 25,000	1	0	4	6	0	0	2	8	1	4	0	0	0	0	3	6	0	0	0	0	2	15	13	3
5,001 - 10,000	9	6	5	7	1	10	0	0	2	8	1	33	3	16	6	13	0	0	2	14	1	7	30	8
2,501 - 5,000	9	6	12	19	1	10	1	4	1	4	0	0	1	5	8	17	0	0	1	7	3	23	37	10
1,001 - 2,500	24	17	17	26	1	10	2	8	2	8	1	33	4	22	9	20	1	14	3	21	3	23	67	18
501 - 1,000	34	25	14	22	2	20	2	8	0	0	1	33	0	0	13	29	1	14	3	21	0	0	70	19
251 - 500	33	24	6	9	2	20	6	25	1	4	0	0	9	50	4	8	1	14	0	0	0	0	62	17
100 - 250	20	14	3	4	3	30	4	16	2	8	0	0	1	5	2	4	0	0	2	14	1	7	38	10
Under 100	3	2	1	1	0	0	2	8	1	4	0	0	0	0	0	0	0	0	3	21	3	23	13	3
Total	136	100	63	100	10	100	24	100	24	100	3	100	18	100	45	100	7	100	14	100	13	100	357	100

TABLE 5
The Total Number of Full-Time Employees in Purchasing Unit
Question: 1e

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Over 100	2	1	0	0	0	0	0	0	2	8	1	33	0	0	0	0	3	42	1	7	0	0	9	2
51 - 100	4	2	5	7	0	0	3	12	3	12	1	33	0	0	0	0	0	0	1	7	2	15	19	5
35 - 50	4	2	2	3	0	0	2	8	4	16	0	0	1	10	2	4	0	0	0	0	1	7	16	4
21 - 34	5	3	6	9	1	10	0	0	5	20	0	0	1	10	7	15	0	0	0	0	1	7	26	7
11 - 20	16	13	8	12	1	10	1	4	4	16	0	0	2	20	5	11	1	14	2	14	3	23	45	12
5 - 10	38	28	20	31	3	30	2	8	2	8	1	33	2	20	12	27	3	42	3	21	2	15	88	25
2 - 4	52	38	20	31	5	50	12	50	3	12	0	0	4	40	18	40	0	0	6	42	3	23	123	35
1	12	8	3	4	0	0	4	16	2	8	0	0	0	0	0	0	0	0	1	7	1	7	23	6
Total	135	100	64	100	10	100	24	100	25	100	3	100	10	100	44	100	7	100	14	100	13	100	349	100

TABLE 6
The Total Number of Full-Time Professional Employees in Purchasing Unit
Question: 1f

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Over 100	1	0	0	0	0	0	0	0	1	4	0	0	0	0	0	0	3	42	0	0	0	0	5	1
51 - 100	1	0	1	1	0	0	0	0	1	4	1	33	0	0	0	0	0	0	0	0	0	0	4	1
35 - 50	2	1	0	0	0	0	0	0	1	4	0	0	0	0	0	0	0	0	1	7	1	7	5	1
21 - 34	1	0	2	3	0	0	3	12	3	12	0	0	0	0	0	0	0	0	1	7	1	7	11	3
11 - 20	5	3	7	11	1	10	2	8	7	28	0	0	2	20	4	9	0	0	1	7	1	7	30	8
5 - 10	15	11	9	14	1	10	3	12	6	24	0	0	2	20	6	13	3	42	1	7	3	23	49	14
2 - 4	51	40	17	27	3	30	2	8	4	16	2	66	3	30	15	34	1	14	7	50	2	15	107	31
1	50	39	25	40	5	50	14	56	2	8	0	0	3	30	18	41	0	0	3	21	5	38	125	37
Total	126	100	61	100	10	100	24	100	25	100	3	100	10	100	43	100	7	100	14	100	13	100	336	100

TABLE 7
The Approximate Annual Expenditures
Question: 1g

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Over $1 Billion	1	0	0	0	0	0	2	8	0	0	0	0	0	0	0	0	2	28	0	0	0	0	5	1
$250 Million - 1 Billion	2	1	0	0	0	0	2	8	6	25	1	33	0	0	1	2	1	14	1	7	1	17	15	4
$100 Million - 250 Million	4	3	7	11	1	11	1	4	3	12	1	33	0	0	2	4	0	0	1	7	1	7	21	6
$25 Million - 100 Million	32	24	22	36	2	22	3	12	8	33	0	0	4	40	7	15	0	0	1	7	3	23	82	24
$5 Million - 25 Million	53	40	20	32	2	22	6	25	2	8	1	33	3	30	20	45	2	28	4	28	5	38	118	34
$1 Million - 5 Million	27	20	8	13	3	33	6	33	2	8	0	0	2	20	11	25	2	28	6	42	2	15	71	20
$250,000 - 1 Million	8	6	3	4	1	11	2	8	1	4	0	0	1	10	3	6	0	0	1	7	1	7	21	6
Under $250,000	4	3	1	1	0	0	0	0	2	8	0	0	0	0	0	0	0	0	0	0	0	0	7	2
Total	131	100	61	100	9	100	24	100	24	100	3	100	10	100	44	100	7	100	14	100	13	100	340	100

TABLE 8
Centralization of Purchasing
Question: 2a

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Centralized	118	88	55	85	8	80	2	83	22	88	2	66	9	90	42	97	5	71	14	100	11	91	306	88
Decentralized	16	11	9	14	2	20	4	16	3	12	1	33	1	10	1	2	2	28	0	0	1	8	40	11
Total	134	100	64	100	10	100	24	100	25	100	3	100	10	100	43	100	7	100	14	100	12	100	346	100

TABLE 9
Purchasing Responsibilities
Question: 2b

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Printing	116	84	53	82	9	90	23	95	18	72	2	66	10	52	38	80	6	85	12	85	11	84	298	82
Mailing	61	44	38	59	5	50	14	58	12	48	0	0	8	42	23	48	1	14	8	57	4	30	174	47
Stationary Stores	115	83	53	82	10	100	17	70	16	64	3	100	8	42	35	74	6	85	14	100	10	76	287	79
Central Warehousing	86	62	37	57	4	40	10	41	15	60	1	33	10	52	33	70	6	85	13	92	13	100	226	62
Risk Management	44	32	24	37	4	40	8	33	7	28	0	0	3	15	11	23	0	0	5	35	8	61	114	31
Sub Contracting	63	45	26	40	1	10	12	50	9	36	1	33	5	26	24	51	2	28	9	64	8	61	160	44
Data Processing	81	59	37	57	5	50	15	62	20	80	0	0	6	31	29	61	6	85	10	71	6	46	215	59
Traffic	66	48	23	35	4	40	9	37	6	24	1	33	6	31	17	36	5	71	4	28	4	30	145	39
Inventory Management	87	63	37	57	7	70	15	62	13	52	1	33	8	42	34	72	5	71	9	64	8	61	224	61
Surplus	119	86	59	92	10	100	14	58	17	68	2	66	9	47	36	76	5	71	11	78	12	92	294	80
Inspection	34	24	18	28	4	40	12	50	10	40	0	0	4	21	13	27	3	42	6	42	5	38	109	30
Real Estate	38	27	10	15	1	10	5	20	3	12	0	0	3	15	5	10	2	28	2	14	2	15	71	19
Construction	70	51	38	59	6	60	15	62	9	36	0	0	6	31	22	46	6	85	10	71	7	53	189	52
General Services	98	71	49	76	8	80	20	83	16	64	1	33	9	47	33	70	6	85	13	92	8	61	261	71
Other	21	15	5	7	2	20	4	16	6	24	0	0	1	5	5	10	4	57	1	7	2	15	51	14

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 10
Who Bids/Tenders by Item Category - Purchasing
Question: 2c

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Supplies	131	95	63	98	9	90	22	91	24	96	3	100	10	52	42	89	7	100	14	100	13	100	338	93
Equipment	132	96	63	98	9	90	21	87	22	88	3	100	10	52	42	89	7	100	14	100	13	100	336	92
General Services	125	91	62	96	10	100	21	87	17	68	1	33	10	52	40	85	5	71	14	100	13	100	318	87
Construction	89	64	47	73	6	60	13	54	16	64	1	33	8	42	28	59	6	85	10	71	8	61	232	63
Consultants	59	43	37	57	3	30	10	41	12	48	0	0	5	26	22	46	4	57	9	64	8	61	169	46
Architects	46	33	30	46	2	20	7	29	5	20	0	0	5	26	15	31	5	71	8	57	4	30	127	34
Engineers	43	31	30	46	2	20	6	25	6	24	0	0	5	26	15	31	6	85	7	50	5	38	125	34

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 11
Requisitions Received Annually
Question: 2d

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Over 30,000	3	2	1	1	0	0	1	4	1	4	1	33	3	30	4	9	1	14	1	7	1	8	17	5
25,001 - 30,000	1	0	6	9	0	0	1	4	0	0	0	0	2	20	4	9	0	0	0	0	1	8	15	4
20,001 - 25,000	4	3	3	4	0	0	0	0	1	4	0	0	0	0	2	4	0	0	0	0	1	8	11	3
15,001 - 20,000	7	5	6	9	1	10	1	4	3	13	1	33	1	10	4	9	0	0	0	0	1	8	25	7
10,001 - 15,000	16	12	6	9	3	30	2	8	1	4	0	0	1	10	5	11	1	14	0	0	3	25	38	11
7,501 - 10,000	18	13	13	20	0	0	2	8	2	9	1	33	1	10	9	20	1	14	3	21	0	0	50	14
5,001 - 7,500	19	14	5	8	1	10	1	4	1	4	0	0	1	10	6	13	2	28	2	14	0	0	38	11
2,501 - 5,000	32	24	12	19	2	20	7	29	4	18	0	0	0	0	8	18	2	28	1	8	72	21		
1,001 - 2,500	21	16	6	9	3	30	6	25	3	13	0	0	1	10	1	2	0	0	1	7	3	25	45	13
Under 1,000	8	6	4	6	0	0	3	12	6	27	0	0	0	0	1	2	0	0	3	21	1	8	26	7
Total	129	100	62	100	10	100	24	100	22	100	3	100	10	100	44	100	7	100	14	100	12	100	337	100

TABLE 12
Purchase Orders Issued Annually
Question: 2e

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Over 30,000	1	0	2	3	1	10	2	9	2	9	1	33	2	20	4	9	1	14	0	0	1	9	17	5
25,001 - 30,000	1	0	2	3	0	0	0	0	1	4	0	0	3	30	3	6	0	0	1	7	0	0	11	3
20,001 - 25,000	3	2	6	9	0	0	0	0	1	4	0	0	0	0	4	9	0	0	0	0	1	9	15	4
15,001 - 20,000	8	6	3	4	1	10	1	4	3	13	0	0	0	0	5	11	0	0	0	0	1	9	22	6
10,001 - 15,000	12	9	6	9	0	0	3	13	3	13	1	33	1	10	4	9	1	14	0	0	1	9	32	9
7,501 - 10,000	19	14	12	18	1	10	1	4	2	9	1	33	2	20	9	20	1	14	3	21	3	27	54	16
5,001 - 7,500	21	16	10	15	1	10	0	0	2	9	0	0	1	10	5	11	2	28	1	7	0	0	43	12
2,501 - 5,000	38	29	11	17	2	20	8	36	2	9	0	0	0	0	5	11	2	28	4	28	2	18	74	21
1,001 - 2,500	22	16	7	10	3	30	2	9	2	9	0	0	1	10	3	6	0	0	3	21	1	9	44	13
Under 1,000	6	4	5	7	1	10	5	22	4	18	0	0	0	0	1	2	0	0	2	14	1	9	25	7
Total	131	100	64	100	10	100	22	100	22	100	3	100	10	100	43	100	7	100	14	100	11	100	337	100

TABLE 13
Average Statistics of Issuing a Purchase Order
Questions: 2f to 2h

	City	County	Cty/Conty	Town	State	Province	Hospital	College	Fed Gvmt	Athry/Com	Other
	amt.	amt.	amt.	amt.	amt.	amt.	amt.	amt.	amt.	amt.	amt.
Cost Per Contract/PO	$39.99	$103.68	$4.80	$8.73	$21.17	$38.57	$5.60	$13.52	$4.24	$10.00	$14.07
Purchasing Overhead %	%12.35	%4.03	%0.07	%1.37	%1.64	%0.12	%0.26	%1.41	%0.77	%0.22	%1.05
No. of Bids/Yr.	131	69	143	550	772	1,044	657	204	15	14	137

Unusual large or small numbers have been omitted to avoid skewing the results

TABLE 14
Beginning Level Buyer - Minimum Qualifications
Question: 3a, 1

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
College	30	28	16	27	2	20	9	50	9	36	2	66	7	70	13	35	1	14	4	30	2	16	95	31
High school plus Experience	68	64	40	68	7	70	9	50	15	60	1	33	3	30	22	59	6	85	9	69	9	75	189	63
Other	8	7	2	3	1	10	0	0	1	4	0	0	0	0	2	5	0	0	0	0	1	8	15	5
Total	106	100	58	100	10	100	18	100	25	100	3	100	10	100	37	100	7	100	13	100	12	100	299	100

TABLE 15
Beginning Level Buyer - Average Annual Salary
Question: 3a, 2

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Under $12,500	4	3	7	12	0	0	2	11	2	8	0	0	1	11	5	14	1	14	0	0	0	0	22	7
$12,501 - 15,000	21	19	15	26	2	20	2	11	7	29	0	0	0	0	8	22	1	14	2	15	2	15	60	20
$15,001 - 17,500	18	16	10	17	2	20	3	17	6	25	0	0	4	44	9	25	4	57	1	7	2	15	59	19
$17,501 - 20,000	18	16	14	25	2	20	4	23	5	20	0	0	4	44	6	17	1	14	5	38	1	7	60	20
$20,001 - 22,500	24	22	4	7	1	10	3	17	0	0	1	33	0	0	3	8	0	0	1	7	2	15	39	13
$22,500 - 25,000	14	12	4	7	1	10	2	11	3	12	1	33	0	0	2	5	0	0	3	23	3	23	33	11
Over $25,001	10	9	2	3	2	20	1	5	1	4	1	33	0	0	2	5	0	0	1	7	3	23	23	7
Total	109	100	56	100	10	100	17	100	24	100	3	100	9	100	35	100	7	100	13	100	13	100	296	100

TABLE 16
Beginning Level Buyer - Spending Authority
Question: 3a, 3

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Under $1,000	40	39	20	37	1	11	9	52	7	30	1	33	1	11	7	19	0	0	5	41	3	23	94	33
$1,000 - 2,999	14	13	7	12	0	0	0	0	4	17	0	0	1	11	11	30	2	33	1	8	5	38	45	15
$3,000 - 4,999	15	14	8	14	4	44	3	17	0	0	1	33	3	33	10	27	2	33	1	8	0	0	47	16
$5,000 or More	22	21	8	14	3	33	4	23	4	17	1	33	3	33	2	5	2	33	4	33	4	30	57	20
Unlimited	11	10	11	20	1	11	1	5	8	34	0	0	1	11	6	16	0	0	1	8	1	7	41	14
Total	102	100	54	100	9	100	17	100	23	100	3	100	9	100	6	100	12	100	13	100	284	100		

TABLE 17
Chief Procurement Officer - Responsibilities
Question: 3b, 1

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Purchase of Commodities only	27	21	13	20	2	20	4	19	4	17	2	66	2	18	11	25	1	14	3	23	1	8	70	21
Purchase of Const. & Commod.	21	16	9	14	1	10	5	23	3	13	1	33	3	27	4	9	0	0	1	7	3	25	51	15
P of Comm., Const. & Serv.	79	62	40	64	7	70	12	57	16	69	0	0	6	54	28	65	6	85	9	69	8	66	211	63
Total	127	100	62	100	10	100	21	100	23	100	3	100m	11	100	43	100	7	100	13	100	12	100	332	100

TABLE 18
Chief Procurement Officer - Minimum Qualifications
Question: 3b, 2

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Qualification Irrelevant	13	10	6	10	0	0	6	30	4	18	1	50	1	10	3	7	1	25	2	16	1	10	38	11
College	87	67	46	78	7	70	11	55	15	68	1	50	8	80	32	78	2	50	10	83	6	60	225	70
High School	28	21	8	13	3	30	3	15	3	13	0	0	1	10	7	16	1	25	0	0	3	30	57	17
Total	128	100	60	100	10	100	20	100	22	100	2	100	10	100	42	100	4	100	12	100	10	100	320	100

TABLE 19
Chief Procurement Officer - Minimum Qualifications, Work Experience
Question: 3b, 2d

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
1 - 3 years	30	24	19	32	4	44	5	27	7	31	1	50	4	40	7	17	2	40	5	50	1	12	85	27
4 - 6 years	70	57	31	53	5	55	9	50	7	31	0	0	5	50	22	53	3	60	4	40	5	62	161	52
7 - 9 years	9	7	3	5	0	0	3	16	3	13	1	50	0	0	5	12	0	0	1	10	0	0	25	8
10 or more years	12	9	5	8	0	0	1	5	5	22	0	0	1	10	7	17	0	0	0	0	2	25	33	10
Total	121	100	58	100	9	100	18	100	22	100	2	100	10	100	41	100	5	100	10	100	8	100	304	100

TABLE 20
Chief Procurement Officer - Minimum Qualifications, Certification
Questions: 3b, 2e

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
CPPO	23	18	14	21	2	20	1	4	5	20	0	0	1	5	13	27	2	28	2	14	2	15	65	17
CPCM	3	2	1	1	0	0	0	0	1	4	0	0	0	0	1	2	0	0	0	0	0	0	6	1
C.P.M, PPB or CACM	19	13	7	10	2	20	0	0	2	8	0	0	2	10	10	21	0	0	2	14	4	30	48	13
Mandatory	8	5	3	4	0	0	1	4	2	8	0	0	1	5	3	6	0	0	0	0	2	15	20	5
Desirable	75	54	33	51	5	50	11	45	12	48	2	66	5	26	25	53	3	42	8	57	6	46	185	50
Irrelevant	35	25	19	29	4	40	8	33	8	32	1	33	4	21	11	23	3	42	4	28	2	15	99	27

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondants*

TABLE 21
Chief Procurement Officer - Average Annual Salary
Question: 3b, 3

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Under $30,000	47	36	16	25	1	10	8	36	6	24	0	0	2	20	12	27	3	42	1	7	3	25	99	29
$30,001 - 40,000	43	33	28	44	5	50	5	22	6	24	1	33	3	30	14	31	2	28	4	30	2	16	113	33
$40,001 - 50,000	26	20	10	15	4	40	6	27	9	36	0	0	2	20	9	20	0	0	6	46	2	16	74	21
$50,001 - 60,000	7	5	9	14	0	0	3	13	1	4	1	33	3	30	8	18	2	28	0	0	3	25	37	10
$60,001 - 70,000	4	3	0	0	0	0	0	0	3	12	1	33	0	0	1	2	0	0	1	7	0	0	10	2
$70,001 and over	3	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	7	2	16	6	1
Total	130	100	63	100	10	100	22	100	25	100	3	100	10	100	44	100	7	100	13	100	12	100	339	100

TABLE 22
Additional Compensation Given for Certification
Question: 3b, 4

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Additional Compen. for Cert.	9	6	4	6	1	10	6	25	0	0	0	0	1	5	2	4	1	14	0	0	1	7	25	8

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 23
Additional Consideration Given Job Applicants With Certification
Question: 3b, 5

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Additional Consid. given	49	35	15	23	1	10	7	29	2	8	1	33	3	15	18	34	1	14	3	21	3	23	101	27

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 24
Approval Authority
Question: 3b, 6

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Under $5,000	48	37	13	21	3	30	10	50	5	20	1	33	0	0	10	23	0	0	3	25	3	25	96	29
$5,001 - 10,000	26	20	14	23	1	10	1	5	0	0	0	0	1	10	0	0	1	16	1	8	1	8	46	13
$10,001 - 15,000	2	1	2	3	0	0	1	5	0	0	0	0	1	10	3	6	0	0	0	0	0	0	9	2
$15,001 - 25,000	6	4	4	6	0	0	1	5	0	0	1	33	0	0	3	6	0	0	1	8	3	25	19	5
$25,001 or more	9	6	5	8	1	10	0	0	2	8	0	0	0	0	4	9	1	16	4	33	3	25	29	8
Unlimited	38	29	22	36	5	50	7	35	18	72	1	33	8	80	23	53	4	66	3	25	2	16	131	39
Total	129	100	60	100	10	100	20	100	25	100	3	100	3	100	10	100	43	100	6	100	12	100	330	100

TABLE 25
Method of Selection
Question: 3b, 7

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Appontd. & Srvs. @ Pleasure of	34	26	19	30	5	50	10	47	10	40	0	0	0	0	7	15	1	14	2	15	1	10	89	26
Appontd. removal for cause	42	33	18	29	4	40	4	19	1	4	0	0	2	20	13	29	0	0	8	61	3	30	95	28
Civil Service	46	36	16	25	1	10	6	28	12	48	3	100	5	50	11	25	6	85	3	23	3	30	112	33
Fixed term	0	0	5	8	0	0	1	4	1	4	0	0	0	0	8	18	0	0	0	0	0	0	15	4
Other	5	3	4	6	0	0	0	0	1	4	0	0	3	30	5	11	0	0	0	0	3	30	21	6
Total	127	100	62	100	10	100	21	100	25	100	3	100	10	100	44	100	7	100	13	100	10	100	332	100

TABLE 26
If Chief Appointed, Do You Agree
Question: 3b, 8

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Yes	65	82	28	68	6	75	8	53	8	80	0	0	4	66	20	80	4	100	7	100	4	66	154	75
No	14	17	13	31	2	25	7	46	2	20	2	100	2	33	5	20	0	0	0	0	2	33	49	24
Total	79	100	41	100	8	100	15	100	10	100	2	100	6	100	25	100	7	100	6	100	203	100		

TABLE 27
Buy Local Preference
Question: 4a

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Not Leg. Req'd. not Practd.	79	62	42	72	2	28	14	63	13	81	1	50	5	55	22	53	4	66	10	71	6	60	198	63
Legally Req'd. not Pract'd.	3	2	0	0	0	0	0	0	1	6	0	0	0	0	2	4	0	0	0	0	0	0	6	1
Not Leg. Req'd. but Pract'd.	44	34	16	27	5	71	8	36	2	12	1	50	4	44	17	41	2	33	4	28	4	40	107	34
Total	126	100	58	100	7	100	22	100	16	100	21	100	9	100	41	100	6	100	14	100	10	100	311	100

TABLE 28
Buy Local Preference - Legally Required For
Question: 4a, 4

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Construction Services	10	41	4	33	3	25	0	0	3	16	0	0	0	0	3	33	0	0	0	0	0	0	23	26
Commodities	7	29	3	25	5	41	1	33	6	33	1	100	1	50	2	22	0	0	0	0	0	0	26	30
Professional Services	1	4	2	16	3	25	1	33	3	16	0	0	0	0	1	11	0	0	0	0	0	0	11	12
All of the Above	6	25	3	25	1	8	1	33	6	33	0	0	1	50	3	33	1	100	2	100	2	100	26	30
Total	24	100	12	100	12	100	3	100	18	100	1	100	2	100	9	100	1	100	2	100	2	100	86	100

TABLE 29
Buy Local Preference - Percent Preference Given
Question: 4a, 5

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Less than 5%	11	12	2	7	1	11	0	0	4	23	0	0	1	20	3	11	1	33	1	25	0	0	24	12
5 - 10%	13	15	2	7	2	22	3	33	3	17	2	100	3	60	7	25	1	33	0	0	1	12	37	18
Over 10%	9	10	3	11	2	22	0	0	1	5	0	0	0	0	2	7	1	33	2	50	0	0	20	10
Varies	3	3	2	7	2	22	0	0	1	5	0	0	0	0	2	7	0	0	1	12	11	5		
0%-Competition Limited	4	4	5	18	0	0	2	22	1	5	0	0	0	0	0	0	0	0	0	0	0	0	12	6
Tie Bids	45	52	13	48	2	22	4	44	7	41	0	0	1	20	13	48	0	0	1	25	6	75	92	46
Total	85	100	27	100	9	100	9	100	17	100	2	100	5	100	27	100	3	100	4	100	8	100	198	100

TABLE 30
Small Business Preference
Question: 4b

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Not Leg. Req'd. - Not Pract'd.	112	84	56	93	8	88	17	77	14	66	2	66	4	80	29	70	1	33	7	63	8	66	258	80
Legally Req'd. not Pract'd.	3	2	0	0	0	0	0	0	5	23	0	0	0	0	3	7	0	0	1	9	0	0	12	3
Not Leg. Req'd. but Pract'd.	17	12	4	6	1	11	5	22	2	9	1	33	1	20	9	21	2	66	3	27	4	33	49	15
Total	132	100	60	100	9	100	22	100	21	100	3	100	5	100	41	100	3	100	11	100	12	100	319	100

TABLE 31
Small business Preference - Legally Required
Question: 4b, 4

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Construction Services	1	20	3	42	1	50	0	0	0	0	0	0	2	22	2	18	1	16	0	0	0	0	9	20
Commodities	3	60	3	42	1	50	1	100	2	33	0	0	2	22	1	16	1	16	1	50	0	0	15	34
Professional Services	0	0	1	14	0	0	0	0	0	0	0	0	2	22	0	0	1	16	0	0	0	0	4	9
All of the Above	1	20	0	0	0	0	0	0	4	66	0	0	3	33	4	66	3	50	1	50	0	0	16	36
Total	5	100	7	100	2	100	1	100	6	100	0	100	9	100	6	100	6	100	2	100	44	100		

TABLE 32
Small Business Preference - Percent Given
Question: 4b, 5

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Less than 5%	4	28	3	42	1	50	0	0	2	28	0	0	0	0	3	27	0	0	2	40	3	75	18	26
5 - 10%	0	0	1	14	0	0	0	0	3	42	0	0	2	33	6	54	0	0	1	20	0	0	13	19
Over 10%	4	28	0	0	0	0	2	50	0	0	0	0	3	50	0	0	4	66	0	0	0	0	13	19
Varies	0	0	2	28	1	50	0	0	0	0	0	0	1	16	1	9	0	0	0	0	0	0	5	7
0%-Competition Limited	6	42	1	14	0	0	2	50	2	28	1	100	0	0	1	9	2	33	2	40	1	25	18	26
Total	14	100	7	100	2	100	4	100	7	100	1	100	6	100	11	100	6	100	5	100	4	100	67	100

TABLE 33
Handicapped Preference
Question: 4c

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Not Legally Req'd.-not Pract'd.	108	87	55	94	6	75	15	93	13	68	3	100	4	57	27	77	5	71	9	75	9	75	254	84
Legally Req'd. not Pract'd.	2	1	0	0	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0	1	8	4	1
Not Legally Req'd. but Pract'd.	14	11	3	5	2	25	1	6	6	31	0	0	3	42	7	20	2	28	3	25	2	16	43	14
Total	124	100	58	100	8	100	16	100	19	100	3	100	7	100	35	100	12	100	12	100	301	100		

TABLE 34
Handicapped Preference - Legally Required
Question: 4c, 4

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Construction Services	0	0	0	0	0	0	2	33	0	0	0	0	1	12	1	8	0	0	0	0	1	50	5	11
Commodities	2	50	3	100	1	100	0	0	4	66	0	0	5	62	6	50	0	0	0	0	0	0	21	50
Professional Svs.	0	0	0	0	0	0	0	0	1	16	0	0	1	12	0	0	0	0	0	0	0	0	2	4
All the Above	2	50	0	0	0	0	4	66	1	16	0	0	1	12	5	41	0	0	0	0	1	50	14	33
Total	4	100	3	100	1	100	6	100	6	100	0	100	8	100	12	100	0	100	0	100	2	100	42100	

TABLE 35
Handicapped Preference - % Preference
Question: 4c, 5

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Less than 5%	3	23	2	33	1	50	0	0	3	37	0	0	1	20	3	23	0	0	2	66	3	60	18	30
5 - 10%	1	7	1	16	1	50	1	25	1	12	0	0	2	40	3	23	0	0	0	0	0	0	10	16
Over 10%	0	0	0	0	0	0	0	0	0	0	0	0	1	20	1	7	0	0	0	0	0	0	2	3
Varies	0	0	1	16	0	0	1	25	1	12	0	0	0	0	1	7	0	0	0	0	0	0	4	6
0%-Competition Limited	9	69	2	33	0	0	2	50	3	37	0	0	1	20	5	38	1	100	1	33	2	40	26	43
Total	13	100	6	100	2	100	4	100	8	100	0	100	5	100	13	100	1	100	3	100	5	100	60	100

TABLE 36
Buy American Preference
Question: 4d

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Not Legally Req'd. & not Pract'd.	75	70	35	62	4	44	11	68	15	75	0	0	6	85	23	65	1	50	7	77	6	60	183	67
Legally Req'd. not Pract'd.	2	1	5	8	1	11	1	6	2	10	0	0	0	0	1	2	1	50	0	0	1	10	14	5
Not Legally Req'd., but Pract'd.	30	28	16	28	4	44	4	5	3	15	0	0	1	14	11	31	0	0	2	22	3	30	74	27
Total	107	100	56	100	9	100	16	100	20	100	0	100	7	100	35	100	2	100	9	100	10	100	271	100

TABLE 37
Buy American Preference - Legally Required
Question: 4d, 4

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Construction Services	1	8	0	0	0	0	0	0	1	14	0	0	1	33	0	0	1	14	5	45	1	100	10	17
Commodities	7	58	4	50	1	100	3	60	3	42	0	0	0	0	0	0	1	14	4	36	0	0	23	40
Professional Services	1	8	0	0	0	0	0	0	1	14	0	0	0	0	0	0	1	14	1	9	0	0	4	7
All the Above	3	25	4	50	0	0	2	40	2	28	0	0	2	66	2	100	4	57	1	9	0	0	20	35
Total	12	100	8	100	1	100	5	100	7	100	0	100	3	100	2	100	7	100	11	100	1	100	57	100

TABLE 38
Buy American Preference - % Given
Question: 4d, 5

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Less than 5%	2	12	0	0	0	0	0	0	0	0	0	0	0	0	2	40	0	0	2	66	1	33	7	12
5 - 10%	3	18	0	0	0	0	2	40	2	28	0	0	1	33	0	0	0	0	0	0	1	33	9	16
Over 10%	0	0	2	28	1	33	1	20	2	28	0	0	1	33	0	0	3	75	1	33	0	0	11	19
Varies	1	6	2	28	0	0	0	0	0	0	0	0	0	0	0	0	1	25	0	0	1	33	5	8
0%-Competition Limited	10	62	3	42	2	66	2	40	3	42	0	0	1	33	3	60	0	0	0	0	0	0	24	42
Total	16	100	7	100	3	100	5	100	7	100	0	100	3	100	5	100	4	100	3	100	3	100	56	100

TABLE 39
Minority Business Enterprise - Requirements
Question: 5a, 1

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Have No Legal Requirements	100	72	45	70	6	60	20	83	11	44	3	100	3	15	27	57	2	28	8	57	6	46	231	63

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 40
Minority Business Enterprise - Have Legal Requirements
Question: 5a, 2

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Have Legal Requirements	17	31	10	38	3	42	1	50	8	32	0	0	4	33	13	41	3	30	1	33	3	42	63	35
Preference	13	24	2	7	0	0	1	50	3	12	0	0	2	16	6	19	1	10	1	33	2	28	31	17
Set-aside	5	9	2	7	1	14	0	0	6	24	0	0	2	16	4	12	4	40	0	0	0	0	24	13
Other	8	14	5	19	1	14	0	0	2	8	0	0	1	8	1	3	0	0	0	0	0	0	18	10
Goal set	11	20	7	26	2	28	0	0	6	24	0	0	3	25	7	22	2	20	1	33	2	28	41	23
Total	54	100	26	100	7	100	2	100	25	100	0	100	12	100	31	100	10	100	3	100	7	100	177	100

TABLE 41
Minority Business Enterprise - Have Admin. Requirements
Question: 5a, 3

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Preference	19	57	4	26	0	0	3	33	3	30	0	0	4	40	4	25	0	0	2	15	2	18	41	34
Set-aside	0	0	2	13	0	0	1	11	3	30	0	0	3	30	3	18	1	100	3	23	2	18	18	15
Other	7	21	5	33	0	0	2	22	0	0	0	0	0	0	2	12	0	0	3	23	3	27	22	18
Goal set	7	21	4	26	1	100	3	33	4	40	0	0	3	30	7	43	0	0	5	38	4	36	38	31
Total	33	100	15	100	1	100	9	100	10	100	0	100	10	100	16	100	1	100	13	100	11	100	119	100

TABLE 42
Programs or Activities - Have No Programs
Question: 5b, 1

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Have No Programs	65	47	36	56	5	50	12	50	14	56	3	100	4	21	27	57	3	42	2	14	6	46	177	48

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 43
Program or Activities - Assisting Minorities
Question: 5b, 2

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Performance Bonds	14	31	4	25	1	100	2	33	5	23	0	0	2	66	2	50	2	28	2	40	1	50	35	31
Insurance in High Risk Areas	6	13	2	12	0	0	1	16	2	9	0	0	0	0	0	0	1	14	1	20	0	0	13	11
Conventional Financing	9	20	1	6	0	0	1	16	4	19	0	0	0	0	0	0	0	0	0	0	0	0	15	13
Venture Capital	5	11	2	12	0	0	1	16	4	19	0	0	0	0	0	0	1	14	0	0	0	0	13	11
Other	11	24	7	43	0	0	1	16	6	28	0	0	1	33	2	50	3	42	2	40	1	50	34	30
Total	45	100	16	100	1	100	6	100	21	100	0	100	4	100	7	100	5	100	2	100	110	100		

TABLE 44
Programs or Activities - Modified Policies Assisting Minorities
Question: 5b, 3

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Have Modfyd. Prch. Plcy.	32	23	14	21	2	20	5	20	8	32	0	0	6	31	10	21	2	28	4	28	5	38	88	24

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of toti respondents*

TABLE 45
Legislation to Assist Minority Businesses
Question: 5b, 4

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Current efforts being made	12	8	7	10	0	0	2	8	4	16	0	0	2	10	1	2	0	0	1	7	1	7	30	8

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 46
Bid Surety - Commodities
Question: 6a, 1

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Legally Req'd.	15	10	14	21	3	30	1	4	4	16	0	0	1	5	5	10	0	0	2	14	1	7	46	12
Req'd. by Admin. Policy	27	19	10	15	1	10	3	12	2	8	0	0	1	5	6	12	1	14	3	21	2	15	56	15
Percent Required	24	17	12	18	3	30	4	16	2	8	0	0	0	0	6	12	0	0	2	14	1	7	54	14
Req'd under certain circumstan.	86	62	35	54	5	50	13	54	16	64	2	66	9	47	27	57	6	85	6	42	13	100	219	60

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 47
Bid Surety - Services
Question: 6a, 2

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Legally Req'd.	22	18	13	20	3	30	3	12	5	20	0	0	1	5	4	8	0	0	1	7	1	7	53	14
Req'd. by Admin. Policy	19	13	12	18	2	20	5	20	3	12	0	0	0	0	5	10	0	0	2	14	1	7	49	13
Percent Req'd.	16	11	10	15	0	0	3	12	2	8	0	0	0	0	4	8	0	0	1	7	0	0	36	9
Not Req'd.	14	10	11	17	2	20	2	8	3	12	0	0	1	5	9	19	0	0	2	14	0	0	44	12
Req'd Under certain circumstan.	75	54	25	39	4	40	13	54	15	60	1	33	8	42	24	51	6	85	6	42	12	92	189	52

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respndents*

TABLE 48
Bid Surety - Construction
Question: 6a, 3

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Legally Req'd.	58	42	38	59	4	40	8	33	9	36	0	0	5	26	24	51	4	57	5	35	3	23	158	43
Req'd. by Admin. Policy	36	26	20	31	3	30	9	37	1	4	1	33	2	10	10	21	0	0	5	35	2	15	89	24
Percent Req'd.	25	18	21	32	2	20	4	16	4	16	0	0	2	10	11	23	0	0	1	7	1	7	71	19
Not Req'd.	0	0	1	1	0	0	0	0	1	4	0	0	0	0	1	2	0	0	1	7	0	0	4	1
Req'd Under certain circumstan.	34	24	10	15	3	30	5	20	13	52	0	0	3	15	12	25	2	28	3	21	8	61	93	25

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 49
Performance Surety - Commodities
Question: 6b, 1

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Legally Req'd.	12	8	12	18	2	20	1	4	3	12	0	0	2	10	3	6	1	14	1	7	1	7	38	10
Req'd. by Admin. Policy	10	7	10	15	0	0	5	20	0	0	0	0	0	09	3	6	0	0	2	14	0	0	30	8
Percent Req'd.	9	6	7	10	2	20	1	4	2	8	0	0	1	5	3	6	0	0	2	14	0	0	27	7
Not Req'd.	29	21	15	23	3	30	5	20	4	16	1	33	1	5	14	29	0	0	3	21	0	0	75	20
Req'd Under certain circumstan.	69	50	30	46	5	50	12	50	17	68	2	66	7	36	25	53	5	71	6	42	13	100	191	52

** Columns are a percent total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 50
Performance Surety - Services
Question: 6b, 2

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Legally Req'd.	21	15	11	17	1	10	2	8	4	16	0	0	1	5	4	8	0	0	2	14	0	0	46	12
Req'd. by Admin. Policy	18	13	11	17	1	10	4	16	2	8	0	0	0	0	4	8	0	0	3	21	0	0	43	11
Percent Req'd.	12	8	6	9	0	0	3	12	3	12	0	0	0	0	4	8	0	0	1	7	0	0	29	7
Not Req'd.	13	9	9	14	1	10	4	16	2	8	0	0	1	5	9	19	0	0	1	7	0	0	40	11
Req'd Under certain circumstan.	78	56	33	51	6	60	13	54	17	68	1	33	8	42	29	61	6	85	7	50	12	92	210	57

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 51
Performance Surety - Construction
Question: 6b, 3

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Legally Req'd.	61	44	36	59	4	40	6	25	10	40	0	0	5	26	23	48	3	42	5	35	2	15	157	43
Req'd. by Admin. Policy	32	23	19	29	2	20	9	37	2	8	1	33	1	5	13	27	0	0	4	28	2	15	85	23
Percent Req'd.	25	18	16	25	1	10	4	16	4	16	0	0	2	10	10	21	1	14	3	21	1	7	67	18
Not Req'd.	0	0	1	1	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0	0	0	2	0
Req'd Under certain circumstan.	35	25	11	17	3	30	7	29	12	48	0	0	5	28	13	27	3	42	4	28	8	61	101	27

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percentage of total respondents*

TABLE 52
Warranty Surety
Question: 6c

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Used	32	26	23	40	2	22	8	38	6	24	0	0	4	44	10	22	0	0	2	16	5	41	92	29
Not Used	89	73	34	59	7	77	13	61	19	76	1	100	5	55	34	77	5	100	10	83	7	58	224	70
Total	121	100	57	100	9	100	21	100	25	100	1	100	9	100	44	100	5	100	12	100	12	100	316	100

TABLE 53
Liquidated Damages
Question: 6d

	City		County		City/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Used	93	74	43	76	6	60	13	59	18	78	1	100	8	80	27	64	5	83	10	76	11	84	235	73
Not Used	32	25	13	23	4	40	9	40	5	21	0	0	2	20	15	35	1	16	3	23	2	15	86	26
Total	125	100	56	100	10	100	22	100	23	100	1	100	10	100	42	100	6	100	13	100	13	100	321	100

TABLE 54
Formal Bidding-Requirements - Dollar Threshold
Question: 7a, 1

	City		County		City/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Less than $1,000	6	4	3	4	0	0	4	16	4	16	0	0	0	0	5	11	0	0	1	7	0	0	23	6
$1,001 - 5,000	28	21	7	11	3	30	7	29	12	48	2	66	3	33	19	43	0	0	4	30	4	30	89	26
$5,001 - 10,000	60	45	27	42	4	40	12	50	4	16	1	33	4	44	9	20	1	16	3	23	2	15	127	37
Over $10,000	37	28	26	41	3	30	1	4	5	20	0	0	2	22	11	25	5	83	5	38	7	53	102	29
Total	131	100	63	100	10	100	24	100	25	100	3	100	9	100	44	100	6	100	13	100	13	100	341	100

TABLE 55
Formal Bidding - Legally Required
Question: 7a, 2

*	City		County		City/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Legally Req'd.	77	56	38	59	4	40	13	54	19	76	0	0	8	42	28	59	5	71	5	35	6	46	203	55

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 56
Formal Bidding - Requirements
Question: 7a, 3

*	City		County		City/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Administration Policy	41	29	10	15	3	30	6	25	4	16	2	66	1	5	16	34	2	28	3	21	4	30	92	25

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 57
Formal Bidding - Advertising
Question: 7b, 1

*	City		County		City/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Legally Req'd.	96	70	52	81	8	80	17	70	17	68	1	33	7	36	30	63	6	85	9	64	9	69	252	69
Not Legally Req'd. but Pract'd.	37	27	13	20	0	0	3	12	2	8	0	0	2	10	6	12	0	0	4	28	1	7	68	18
Req'd. for Days	38	27	13	20	1	10	5	20	6	24	0	0	3	15	5	10	1	14	2	14	4	30	78	21
Never Advertise	0	0	0	0	0	0	1	4	2	8	0	0	1	5	1	2	0	0	0	0	0	0	5	1
Very Rarely Advertise	4	2	0	0	2	20	2	8	5	20	1	33	2	10	8	17	1	14	1	7	2	15	28	7

** Columbus are a percent of total responding in jurisdiciton category*
*** Row totals are a percent of total respondents*

TABLE 58
Formal Bidding - Bidder Qualification
Question: 7c, 1

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Req'd. Prequalification	19	13	9	14	3	30	6	25	3	12	2	66	2	10	11	23	3	42	3	21	5	38	66	18
Req'd. Postqualification	21	15	15	23	3	30	3	12	3	12	0	0	3	15	5	10	3	42	4	28	1	7	61	16
No Qualification Req'd.	52	37	30	46	3	30	10	41	7	28	0	0	1	5	11	23	1	14	3	21	4	30	122	33
Use Bidders Application Form	45	32	28	43	0	0	8	33	14	56	1	33	2	10	14	29	2	28	4	28	5	38	123	33
Have Estab. Formal Bidrs. List	78	56	40	62	3	30	13	54	17	68	2	66	9	47	26	55	4	57	8	57	6	46	206	56
Use Vendor Code	8	5	7	10	0	0	0	0	5	20	0	0	2	10	3	6	0	0	0	0	1	7	17	4
EIN Number	5	3	1	1	1	10	3	12	1	4	0	0	2	10	3	6	0	0	0	0	1	7	26	7
D&B Number	1	0	1	1	1	10	0	0	0	0	0	0	1	5	1	2	4	57	0	0	0	0	9	2
Other	25	18	14	21	0	0	4	16	8	32	2	66	0	0	10	21	0	0	1	7	3	23	67	18
None	15	10	7	10	1	10	0	0	4	16	0	0	2	10	6	12	0	0	0	0	3	23	38	10

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 59
Small Purchases
Questions: 8a - 8c

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
No Such Practice	23	20	19	33	1	11	6	30	3	14	0	0	3	30	18	42	6	85	5	41	4	33	88	28
Legally Specified	16	14	7	12	2	22	4	20	7	33	2	66	2	20	5	11	1	14	2	16	0	0	48	15
Administrative Policy	73	65	30	53	6	66	10	50	11	52	1	33	5	50	19	45	0	0	5	41	8	66	168	55
Total	112	100	56	100	9	100	20	100	21	100	3	100	10	100	42	100	7	100	12	100	12	100	304	100

TABLE 60
Small Purchases - Amount Agency Can Purchase
Question: 8d

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Less than $100	50	45	23	50	3	33	6	33	4	18	2	66	0	0	13	46	0	0	5	55	1	11	107	40
$100 - 500	45	41	17	36	3	33	2	11	7	31	0	0	5	83	9	32	1	50	4	44	5	55	98	37
$501 - 1,000	8	7	1	2	1	11	5	27	2	9	0	0	0	0	5	17	0	0	0	0	1	11	23	8
$1,001 - 2,500	1	0	2	4	1	11	4	22	5	22	1	33	0	0	0	0	0	0	0	0	1	11	15	5
$2,501 - 5,000	4	3	1	2	1	11	1	5	2	9	0	0	0	0	1	3	0	0	0	0	0	0	10	3
Over $5,000	1	0	2	4	0	0	0	0	2	9	0	0	1	16	0	0	1	50	0	0	1	11	8	3
Total	109	100	46	100	9	100	18	100	22	100	3	100	6	100	28	100	2	100	9	100	9	100	261	100

TABLE 61
Small Purchases
Question: 8e

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Use most favored cust. clause	5	3	5	7	0	0	1	4	1	4	0	0	1	5	1	2	2	28	0	0	1	7	17	4
Use Incentive Clause	11	8	5	7	2	20	3	12	1	4	0	0	2	10	2	4	2	28	0	0	0	0	28	7
Use QPL	31	22	19	29	0	0	11	45	13	52	1	33	7	36	20	42	5	71	5	35	3	23	115	31
Consider Cash Disc. Offered	87	63	32	50	5	50	10	41	10	41	0	0	4	21	20	42	0	0	5	35	7	53	180	49
FSS Number System	5	3	3	4	2	20	1	4	1	4	0	0	3	15	0	0	4	57	0	0	2	15	21	5
SIC Number	2	1	3	4	1	10	0	0	2	8	0	0	1	5	0	0	2	28	0	0	0	0	11	3
Other	15	10	9	14	1	10	2	8	7	28	0	0	1	5	7	14	0	0	2	14	2	15	46	12
None	14	10	4	6	2	20	3	12	2	8	0	0	1	5	8	17	0	0	2	14	3	23	39	10

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 62
Miscellaneous - South African Resolution, Status
Question: 9a, 1

*	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		** Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Adopted	13	9	4	6	1	10	2	8	2	8	1	33	2	10	1	2	1	14	2	14	2	15	31	8
Under Consideration	10	7	2	3	0	0	1	4	2	8	0	0	1	5	5	10	0	0	1	7	2	15	24	6

** Columns are a percent of total responding in jurisdiction category*
*** Row totals are a percent of total respondents*

TABLE 63
Miscellaneous - South African Resoulution, Provisions
Question: 9a, 2

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Total Ban	7	50	1	20	0	0	1	100	1	50	1	100	1	50	3	75	1	50	1	50	1	33	18	48
Exempts Sullivan Princ. Sig.	2	14	1	20	0	0	0	0	1	50	0	0	1	50	0	0	0	0	0	0	0	0	5	13
Req'd. Certification frm ven.	4	28	1	20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	50	1	33	7	18
Exceptions Allowed	1	7	2	40	1	100	0	0	0	0	0	0	0	0	1	25	1	50	0	0	1	33	7	18
Total	14	100	5	100	1	100	1	100	2	100	1	100	2	100	4	100	2	100	2	100	3	100	37	100

TABLE 64
Miscellaneous - Contract for Audit Services, Status
Question: 9b, 1

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Yes	94	81	43	81	9	100	11	84	5	25	0	0	3	60	23	57	2	66	11	84	7	63	208	72
No	22	18	10	18	0	0	2	15	15	75	2	100	2	40	17	42	1	33	2	15	4	36	77	27
Total	116	100	53	100	9	100	13	100	20	100	2	100	5	100	40	100	3	100	13	100	11	100	285	100

TABLE 65
Miscellaneous - Contract for Audit Services, Procurement Method
Question: 9b, 2

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Competitive Sealed Proposal	77	65	32	65	6	66	10	66	8	61	0	0	5	83	22	55	2	40	9	81	5	83	176	64
Competitive Sealed Bid	22	18	8	16	3	33	4	26	3	23	0	0	1	16	10	25	1	20	1	9	1	16	54	19
Sole Source	18	15	9	18	0	0	1	6	2	15	0	0	0	0	8	20	2	40	1	9	0	0	41	15
Total	117	100	49	100	9	100	15	100	13	100	0	100	6	100	40	100	5	100	11	100	6	100	271	100

TABLE 66
Miscellaneous - Straight Lease or 3rd Party Leases, Status
Question: 9c, 1

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Yes	70	62	40	76	4	40	14	82	20	90	1	100	6	66	26	66	4	100	6	50	4	44	195	67
No	42	37	12	23	6	60	3	17	2	9	0	0	3	33	13	33	0	0	6	50	5	55	92	32
Total	112	100	52	100	10	100	17	100	22	100	1	100	9	100	39	100	4	100	12	100	9	100	287	100

TABLE 67
Miscellaneous - Straight Lease or 3rd Party Leases, Provisions
Question: 9c, 2

	City		County		Cty/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		* Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Buy out provision	59	45	29	46	1	25	11	45	15	37	1	33	5	38	23	43	4	33	4	57	4	40	156	80
Fixed price guaranteed	39	30	18	28	2	50	6	25	13	32	1	33	4	30	17	32	4	33	2	28	3	30	109	55
Includes maintenance	31	24	16	25	1	25	7	29	12	30	1	33	4	30	13	24	4	33	1	14	3	30	93	47

** Percent of respondents indicating straight lease or 3rd party leases*

TABLE 68
Miscellaneous - Centralized Admin. Vehicle Program, Status
Question: 9d, 1

	City		County		City/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Vehicle & Maintenance	90	72	32	55	7	70	10	52	12	60	1	100	7	77	25	62	3	60	9	75	9	75	205	65
Vehicle Only	4	3	3	5	0	0	4	21	4	20	0	0	0	0	6	15	0	0	1	8	1	8	23	7
Maintenance Only	13	10	8	13	1	10	1	5	0	0	0	0	0	0	1	2	0	0	0	0	0	0	24	7
None	18	14	15	25	2	20	4	21	4	20	0	0	2	22	8	20	2	40	2	16	2	16	59	18
Total	125	100	58	100	10	100	19	100	20	100	1	100	9	100	40	100	5	100	12	100	12	100	311	100

TABLE 69
Miscellaneous - Centralized Admin. Vehicle Program, Cost Allocation
Question: 9d, 2

	City		County		City/Conty		Town		State		Province		Hospital		College		Fed Gvmt		Athry/Com		Other		Total	
	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct	no.	pct
Separate Budget	45	40	17	36	3	30	6	31	10	62	1	100	5	62	20	60	0	0	9	75	4	40	120	44
Actual V&M cost billed u	55	49	19	41	4	40	8	42	4	25	0	0	1	12	9	27	1	50	3	25	2	6 60	110	40
Actual vehicle cost billed to	3	2	3	6	2	20	4	21	2	12	0	0	2	25	2	6	0	0	0	0	0	0	18	6
Actual maint. cost billed	9	8	7	15	1	10	1	5	0	0	0	0	0	0	2	6	1	50	0	0	0	0	21	7
Total	112	100	46	100	10	100	19	100	16	100	1	100	8	100	33	100	2	100	12	100	10	100	269	100

Appendix C
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Appendix D
Glossary of Public Purchasing Terms

Every profession talks to itself in its own language. Apparently there is no Rosetta Stone.

Murphy's 18th Law

And in public purchasing every jurisdiction seems to talk to itself in its own language. The Glossary is offered as a Rosetta Stone for communication among public purchasers and, more important, for clearer communication with the markets that serve government.

This Glossary, like the text of *State and Local Government Purchasing*, is a third edition. The first was indebted to a number of earlier sources including Kohler's *A Dictionary for Accountants*, Alijan's *Purchasing Handbook* and the NIGP *Dictionary of Purchasing Terms*. The second edition included only a few changes and additions, largely suggestions of the Project and Oversight Committees.

For this Glossary, current editions of the standard works were examined. The results were disappointing. For the most part there appears to have been no effort to update sections devoted to definitions. The 4th (1986) edition of the NIGP *Dictionary of Purchasing Terms* does introduce new material but much is definition of office automation and computing terms. Many of the contributions to this Glossary come from the American Bar Association *Model Procurement Code for State and Local Governments*. These are identified with "(MPC)" since some of the definitions have meanings peculiar to the *Code*.

The majority of changes in this third edition of the Glossary . . . modifications, revisions, and additions . . . are the product of the NASPO Committee on Research. And the Committee expressly reaffirms the disclaimer in the two earlier editions — that the glossary seeks primarily to present meanings for the purpose of public purchasing, not necessarily legal or literally accurate definitions. As an example, the definition given for Conflict of Interest does not speak to actions concerning the private sector, such as physician/patient, attorney/client, stockbroker/client relationships.

The definitions for the following words and phrases may be found in the Uniform Commercial Code and, to conserve space, are not reproduced here except for a very few having additional definitions peculiar to public procurement. The reader is urged to read, periodically, the Uniform Commercial Code found in each of the statutes of the fifty States bearing in mind the courts have shown little sympathy for those in the market place who plead ignorance of the Code.

DEFINITIONS CONTAINED IN THE UNIFORM COMMERCIAL CODE

Accept
Acceptance
Action
Aggrieved party
Agreement
Alteration
Bailee
Bearer
Bearer form
Bill of lading
Bona fide purchaser
Buyer
Buyer in ordinary course of business
Cancellation
Certificate of deposit
Certification
Conforming to contract
Consignee
Consignor
Consumer goods
Contract
Contract for sale
Contract right
Customer
Debtor
Defendant
Definite time
Delivery
Delivery order
Document
Document of title
Equipment
Fault
Fungible
Genuine
Gives
Good faith
Goods
Holder in due course
Insolvency proceedings
Insolvent
Installment contract
Instrument
Inventory
Issue
Issuer
Item
Lot
Merchant
Negotiation
Note
Notice
On demand
Order
Party
Presumed
Presumption
Proceeds
Promise
Properly payable
Protest
Purchase
Purchaser
Receipt
Remedy
Rights
Sale
Sale on approval
Sale or return
Secondary party
Secured party
Security
Seller
Surety
Term
Termination
Third party
Value
Warehouse receipt

Acknowledgment - A form used by a vendor to advise a purchaser that an order has been received, and usually implying acceptance.

Acquisition Price - See "Initial Price."

Act of God - A contingency or occurrence that cannot be avoided by human power; a cause of damage which is irresistible (e.g., hurricane, flood, lightening) and not attributable to negligence.

Administrative Law - A rule or regulation having the force and effect of law promulgated (usually in accordance with an Administrative Procedure Act) by an agency to implement, interpret or make statute/ordinance law specific. See "Regulation," "Rule."

Advertising - A form of public notice of an intended purchase. See "Legal Notice."

Advice of Shipment - A notice to a purchaser advising shipment has gone forward and usually containing details of packing, routing, etc.

Agency - (1) An administrative division of a government. (2) A relationship between two parties by which one, the agent, is authorized to perform or transact certain business for the other, the principal; also, the office of the agent.

Agent - A person authorized by a superior, i.e. principal, to act for him. In public purchasing, this designation is usually incorporated into statute/ordinance law. See "Purchasing Agent."

Agreement - See "Contract," "Purchase Order," and the Uniform Commercial Code.

All-Or-None Bid - A bid submitted for a number of different items, services, etc., in which the bidder states he will not accept a partial award, but will accept only an award for all the items, services, etc., included in the Invitation for Bids. Such bids are acceptable only if provided for in the Invitation, or if the bidder quoted an individual price for each of the items, services, etc., as listed and is the low bidder on each item.

Alternate Bid - (1) A response to a call for alternative bids. See "Alternative Bid, Call For." (2) A bid submitted in knowing variance from the specifications, terms, conditions, or provisions of the solicitation. Such a bid is acceptable only when the variance is deemed to be immaterial.

Alternate Bid, Call For - An Invitation for Bids for a need that can be filled by items of varying materials, dimensions, styles, or other characteristics; bidders are invited to submit one or more bids as specified, but only one award will be made based on an assessment of what is most advantageous for the government, taking price and other factors into consideration.

Alternate Proposal, Call For - A Request for Proposals in which offerors are encouraged to exercise ingenuity and innovation in proposing how the need of the jurisdiction may be met.

Antitrust Legislation - Laws that attempt to prevent or eliminate monopolies or oligopolies and to prevent noncompetitive practices.

Appropriation - Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

Approved Brands List - See "Qualified Products List."

Arbitrary, Capricious, or Fraudulent Action - Action by whim or caprice (or in case of fraud, in reasoned action); ungoverned action; the only grounds for a court to overrule or remand an administrative decision or ministerial action of a public purchaser.

Arbitration - A process by which a dispute between two contending parties is presented to one or more disinterested parties for a decision. Resolution o a disagreement by such a process.

Architect-Engineer and Land Surveying Services - Those professional services within the scope of the practice of architecture, professional engineering or land surveying as defined by the laws [of the jurisdiction]. (MPC)

Arrival Notice - A notice sent by a carrier to a consignee advising of the arrival of a shipment.

As Is - A term indicating that goods offered for sale are without warranty or guarantee, and that the purchaser takes the goods at his own risk without recourse against the seller for the condition or performance of the goods.

Assignment - (1) Legal transfer of a claim, right, interest or property. (2) Subcontracting. See "Subcontractor"

Authorized Price List - A price list of the products and /or services covered in a contract which contains minimum essential information needed by users for placing orders.

Award - The acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a bidder.

Back-Door Selling - Direct, undue marketing effort to induce preference on the part of program managers or using agencies for a particular product, service, or seller with intent to constrain competition.

Back Order - That portion of an order which a vendor does not deliver at the scheduled time and has re-entered for shipment at a later date.

Best Interests of the (State, County, Municipality) -The rationale granting a purchasing official discretion in taking action most advantageous to the jurisdiction when it is impossible to delineate adequately a specific response by law or regulation. Case law affirms this discretion. See "Arbitrary, Capricious, Fraudulent Action."

Bid - The executed document submitted by a Bidder in response to an Invitation for Bids, a Request for Quotation or a multi-step bidding procedure.

Bid-Award File - A file divided into commodity and item sections listing those solicited for individual bids, what each response was, and other information. The bid-award file is used to compare past bids for award patterns that might reveal collusive agreements or to make other comparisons of data.

Bid Bond - An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, fails to accept the contract as bid. See " Bid Deposit," "Bid Security."

Bid Deposit - A sum of money or check deposited with and as instructed by the prospective purchaser to guarantee the bidder (depositor) will, if selected, accept the contract in accordance with the bid. If the bidder does not accept

the contract, he forfeits the amount of the deposit. See "Bid Bond," "Bid Security." See also "Forfeiture of Deposit of Bond."

Bid Opening - The formal process through which bids are opened and the contents revealed for the first time to the jurisdiction, other bidders and usually, to the public. See "Public Bid Opening."

Bid Sample - A sample required of a bidder for examination, comparison, testing, and evaluation by the prospective purchaser.

Bid Security - A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract, will accept the contract as bid, otherwise the bidder (in the case of a deposit) or his/her guarantor(in the case of a bond) will be liable for the amount of the bond or deposit. See "Bid Bond," "Bid Deposit."

Bidder - Any person submitting a competitive bid in response to a solicitation. See "Bid," "Proposal," "Proposer."

Bidders List - A list maintained by the purchasing office setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can by solicited. See "Pre-qualification of Bidders," "Qualified Bidder."

Bill - A list of charges or costs presented by a vendor to a purchaser, usually enumerating the items furnished, their unit and total costs, and a statement of the terms of sale; an invoice.

Bill of Materials - A list specifying the quantity and character of materials and parts required to produce or assemble a stated quantity of a particular product.

Blanket Order - An arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and often over-the-counter basis. Properly prepared, such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period. See "Open-end Contract," "Price Agreement," "Requirements Contract."

Blanket Purchase - See "Blanket Order."

Blind Trust - An independently managed trust in which the beneficiary has no management rights and in which the beneficiary is not given notice of alteration in, or other dispositions of, the property subject to the trust. (MPC)

Boiler Plate - Colloquial designation for standard terms and conditions, usually preprinted, incorporated in an Invitation for Bids, Request for Proposals, or a contract or purchase order. See "General Provisions."

Bona Fide - In good faith.

Brand Name - A product which serves to identify a product of a particular manufacturer. A trade name.

Brand Name or Equal Specification - A specification that cites brand names, model numbers, or other identifications as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer.

Brand Name Specification - A specification that cites the brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

Breach of Contract - A failure without legal excuse to perform any promise which forms a whole or part of a contract. See "Forfeiture of Deposit or Bond."

Breach of Warranty - Infraction of an express or implied agreement as to the title, quality, content, or condition of a thing sold.

Bulk Purchasing - Purchasing in large quantities to seek a lower price per unit; volume purchasing.

Business - Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity. (MPC)

Buy American - A policy, usually expressed in law, requiring purchase of American-made products, products with a substantial percentage of American-made components, or extending a percentage price advantage to American-made products. See "Preference."

Buyer - An industrial purchasing designation connotating limited scope and authority as a purchaser. Commonly but improperly used in public purchasing. See "Purchasing Agent," "Purchasing Manager". See also meaning under the Uniform Commercial Code.

Buyer's Market - Market conditions in which goods can easily be secured and economic forces of business tend to cause goods to be priced at the purchaser's estimate of value.

Calendar Day - Every day shown on the calendar, Saturdays, Sundays, and holidays included.

Cash Discount - A discount from the purchase price allowed by the seller to the purchaser when payment is made within a designated period. A cash discount should not be considered as a factor of award since it is predicated on future and uncertain action.

Cash on Delivery (COD) - Payment due and payable upon delivery of goods.

Catalog - A listing of item identifications arranged systematically. See "Price Schedule."

Caveat Emptor - "Let the buyer beware." A maxim stating the buyer should be careful in making a purchase because the burden of defective goods rests with him. In contravention, the seller can be held responsible for certain defects by means of suitable specifications, warranties, and contractual terms and conditions.

Caveat Venditor - "Let the seller beware." A maxim relating to situations where the vendor bears the responsibility for defects in the goods he sells.

Central Purchasing Authority - The administrative unit with the authority, responsibility, and control of purchasing activities.

Centralized Purchasing - A system of purchasing in which authority, responsibility, and control of activities is concentrated in one administrative unit. See "Decentralized Purchasing."

Certificate of Compliance - A supplier's certification that the supplies or services in question meet certain specified requirements.

Certificate of Non-Collusion - A statement signed by a bidder and submitted with his bid affirming that his bid is made freely, independently and without consultation with any other bidder.

Change Order - A written order signed by the Procurement Officer, directing the contractor to make changes which the Changes clause of the contract authorizes the Procurement Officer to order without consent of the contractor.

Claim - The aggregate of the operative facts which serve as a basis for a demand for payment, reimbursement, or compensation for injury or damage under law or contract; the assertion of such a demand.

Classified Service - See "Merit System."

Client Services - Services contracted for by a government jurisdiction on behalf of citizen clients usually requiring pre-qualification or licensing by the government for the performance of social or welfare services. Examples of client services include day care, half-way houses, vocational rehabilitation, guidance counseling and employment services.

Code of Ethics - Written guidelines within which judgments and considerations of professional ethics and behavior should be made for all elected, appointed and classified employees of a jurisdiction. See "Purchasing Ethics."

Collusion - A secret agreement or cooperation between two or more persons to accomplish a fraudulent, deceitful, or unlawful purpose.

Collusive Bidding - The response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding. See "Corrupt Combination", or "Conspiracy in Restraint of Trade," "Price Fixing."

Commercial Law - The branch of law that designates the rules that determine the rights and duties of persons engaged in trade and commerce. See "Uniform Commercial Code."

Commodity - An article of trade, a movable article of value, something that is bought or sold; any movable or tangible thing that is produced or used as the subject of barter or sale.

Competition - The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service.

Competitive Bidding - The submission of prices by individuals or firms competing for a contract, privilege, or right to supply merchandise or services. Competitive sealed bidding is the preferred method of source selection in public purchasing.

Competitive Negotiation - A method for contracting for goods and services, whereby proposals are solicited from qualified suppliers, following submission of which changes in proposals and prices by allowed, and the offer deemed by the awarding authority to be most advantageous in terms of criteria as designated in the Request for Proposals is accepted; a negotiated procurement. See "Competitive Proposals."

Competitive Quotations - The customary, and usually prescribed, method for making purchases involving dollar amounts less than that for which competitive sealed bidding is required. Such competition is often called for by law, with the transactions designated as "informal bidding," or "small purchases."

Competitive Sealed Proposals - A term used by the ABA Model Procurement Code for competitive negotiation as a source selection. (MPC)

Confidential Information - (1) Any information which is available to an employee only because of the employee's status as a public employee and is not a matter of public knowledge or available on request. (MPC) (2) Information, such as trade secrets and test data, which may be kept confidential in the purchasing process.

Confirming Order - A de facto purchase order issued to a vendor listing goods or services procured verbally and/or outside established purchasing procedures. Since a confirming order precludes competition it may be illegal under certain laws/ordinances.

Conflict of Interest - A situation where the personal interests of a contractor, public official or classified employee are, or appear to be, at odds with the best interests of the jurisdiction. See "Code of Ethics," "Purchasing Ethics."

Consideration - Acts, promises, or things of value exchanged by two parties that validates a contract between them.

Conspicuously - Written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it. (MPC)

Construction (Work) - The process of building, altering or repairing a public structure or building, or other improvements to any public real property. It does not include routine operation, routine repair or routine maintenance of existing structures, buildings or real property. A project usually requiring the professional services of an architect or engineer. (MPC)

Contingency - A possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminate at the present time.

Contract - (1) A deliberate verbal or written agreement between two or more competent persons to perform or not to perform a specific act or acts. Also, an "Agreement." (2) All types of [government] agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction. (MPC)

Contract Administration - The management of various facets of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and obligations to the purchaser are fulfilled. In governments, this management may include responsibility delegated by the central purchasing authority to using agencies.

Contract Modification - Any written alteration to specifications, delivery point, rate of delivery, period of performance, price, quality, or other provisions of any contract accomplished by mutual action of the parties to the contract. (MPC) See "Change Order."

Contract Record - A record providing particulars regarding the orders or releases placed for delivery of goods against a contract so the volume of contract purchases can be determined.

Contract Release Order - A purchase document or order issued by a Using Agency consistent with the prices, terms and conditions established by a contract issued by the Central Purchasing Authority. See "Field Purchase Order."

Contractor - Any person having a contract with a governmental body. (MPC)

Contractual Services - Services furnished under a contract in which the nature and basis for charges and other pertinent contractual terms and conditions are defined. See "Services," "Client Services," "Professional Services," "Proprietary Services," "Management Services," "Personal Services."

Convenience Termination Clause - A contract clause which permits the government to terminate, at its own discretion, the performance of work in whole or in part, and to make settlement of the vendor's claims in accordance with appropriate regulations and applicable contractual conditions.

Cooperative Purchasing - (1) The combining of requirements of two or more political entities to obtain the advantages of volume purchases, reduction in administrative expenses, or other public benefits. (2) Procurement conducted by, or on behalf of, more than one Public Procurement Unit, or by a Public Procurement Unit with an External Procurement Activity. (MPC)

Copyright - A grant made by a government to a writer/artist which recognizes sole authorship/creation of a work and protects the creator's interest(s) therein. U.S. Copyright case law on computer programs remains unclear.

Corrupt Combination, Collusion or **Conspiracy in Restraint of Trade** - Terms referring to an agreement between two or more businesses to stifle, control, or otherwise inhibit free competition in violation of state and/or federal antitrust laws or regulations. See "Collusive Bidding," "Price Fixing."

Cost Principles - Under regulations, the principles used to determine the allowability of incurred costs for the purpose of reimbursement under contract provisions. (MPC)

Cost-Reimbursement Contract - A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions (of the purchasing law), and a fee, if any. (MPC)

Damages - Compensation, usually in money, for injury to goods, persons, or property.

Data - Recorded information, regardless of form or characteristic. (MPC)

Debarment - A shutting out or exclusion (through due process) for cause, as a bidder from a list of qualified prospective bidders. See "Suspension."

Debt - Any obligation to pay money. Ordinarily the term debt means a sum of money due by reason of a contract expressed or implied. Broadly, the word may include obligations other than to pay money, such as the duty to render services or deliver goods.

Decentralized Purchasing - A system of purchasing in which there is a (varying) degree of delegation of authority, responsibility, and control of purchasing activities to the several Using Agencies. Delegation does not relieve the Central Purchasing Authority from accountability.

Default - Failure by a party to a contract to comply with contractual requirements; contractor failure to perform.

Defect - A non-conformance of an item with specified requirements.

Delivery Schedule - The required or agreed time, or rate, of delivery of goods or services.

Delivery Terms - Conditions in a contract relating to freight charges, place of delivery, time of delivery, or method of transportation.

Descriptive Literature - Information, such as illustrations, charts, drawings, and technical data which shows the characteristics or construction of a particular product or explains its operations, furnished by a bidder as part of his bid to describe the items he offers. The term refers only to information required to evaluate a product, and need not include other information such as that related to the qualifications of a bidder or operating or maintaining equipment.

Design Specifications - A type or manner of writing a purchase description characterized by detail as to how the product is to be manufactured or work is to be performed; generic specification. Appropriate for a unique product or custom work. See "Functional Specifications," "Performance Specifications."

Designation of Special Purpose - A term referring to special use for which no items of the kind needed are regularly produced (e.g., sewing machines for teaching blind people to sew), and purchase is accomplished through an Invitation for Bids using a broad specification for a standard market item with a description of the special purpose for which the item will be used together with a questionnaire asking what modifications bidders will make to their standard product to meet the particular need.

Designee - A duly authorized representative of a person holding a superior position. (MPC) See "Purchasing Agent."

Determination - A decision made by a public official or employee which shall be in writing and based on written findings.

Direct or Indirect Participation - Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity. See "Code of Ethics," "Purchasing Ethics."

Directives - Laws, rules and regulations, policy and procedures which affect the conduct of a contract and are cited by reference in the solicitation for the guidance of bidders/offerors. Examples include OSHA, EEO, Labor Surplus Areas, etc.

Disadvantaged Business - A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantage. (MPC)

Discount - An allowance or deduction from a normal or list price extended by a seller to a buyer to make the net price more competitive. See "Cash Discount," "Quantity Discount," "Standard Package Discount," "Trade Discount."

Discount Schedule - A list of discounts applying to varying quantities of goods, or applicable to differing classifications of purchasers.

Disposition - Transferring, trading-in, selling, or destroying goods that are excess, surplus or scrap.

Dispute - A difference between a contractor and a jurisdiction over performance or other elements of a contract calling for appropriate administrative action with the intent of achieving a remedial result. See "Protest," "Resolution."

Economic Order Quantity (EOQ) - The stock level reorder point based on costs of acquisition, storage, handling, and inventory investment to determine the most cost effective time and quantity to reorder. See "Stock Control," "Reordering Level."

Emergency Purchase - A purchase made without following normal purchasing procedures in order to obtain goods or services to meet an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

Employee - An individual drawing a salary from a governmental body, whether elected or not, and any uncompensated individual performing personal services for any governmental body. (MPC)

Equal Employment Opportunity Program - A plan to include minority groups or other disadvantaged persons in the work force of businesses affected by the plan.

Equal, Or Equal - A phrase used to indicate the acceptability of products of similar or superior function, purpose, design, and/or performance. See "Brand Name or Equal Specification."

Equipment - Personal property of a durable nature which retains its identity throughout its useful life. See "Uniform Commercial Code."

Escalation Clause - See "Price Adjustment Provision."

Established Catalogue Price - The price included in a catalogue, price schedule or other form that: (a) is regularly maintained by a manufacturer or contractor; (b) is either published or otherwise available for inspection by customers; and (c) states prices at which sales are currently or were last made to a significant number of any category of buyers, or to the general buying public, for the supplies or services involved. (MPC)

Ethics - See "Code of Ethics," 'Purchasing Ethics."

Evaluation Committee - A committee which advises and assists the purchasing office in evaluation and award, usually employed in high tech and purchase of services transactions.

Evaluation of Bid - The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the bid that relate to determination of the successful bidder.

Excess Property - Inventory not required by the owning agency, but of potential utility to one or more agencies of the jurisdiction or to others eligible to receive it by transfer.

Excess Supplies - Any supplies other than expendable supplies having useful life, but which are no longer required by the Using Agency in possession of the supplies. (MPC)

Exhaustion of Administrative Remedies - A legal doctrine to the effect that where an administrative remedy is provided by statute or governing rule or regulation, relief must be first sought from the administrative body, and all attempts to obtain such administrative relief must be expended before the complaining party may look to the courts for relief.

Expedite - Effort to assure delivery of goods purchased in accordance with a time schedule, or to accelerate delivery, usually by contact of the purchaser with the vendor.

Expendable Supplies - All tangible supplies other than non-expendable supplies. (MPC)

Express Warranty - Any affirmation of fact or promise made by a seller to a buyer which relates to the goods and becomes part of the basis of the bargain.

Extension - A provision, or exercise of a provision, of a contract which allows a continuance of the contract (at the option of the jurisdiction) for an additional time according to contract conditions. Not to be confused with "Renewals."

External Procurement Activity - Any buying organization not located (with)in this [jurisdiction] which, if located (with)in this [jurisdiction] would qualify as a Public Procurement Unit. An agency of the United States is an External Procurement Activity. (MPC)

Fair Market Value - A price that would induce a willing purchaser or a willing seller to sell in an open market transaction, the price a property would bring at a fair sale between parties dealing on equal terms.

Fidelity Bond - A bond which secures an employer up to an amount stated in the bond for losses caused by dishonesty or infidelity on the part of the employee.

Field Purchase Order - A specific purchase document or order issued to a vendor in accordance with authority to make the purchase as delegated to using agencies by a central purchasing office. See "Contract Release Order."

Financial Interest - (a) ownership of any interest or involvements in any relationship from which, or as a result of which, a person within the past (year) has received, or is presently or in the future entitled to receive, more than ($____) per year, or its equivalent; (b) ownership of such interest in any property or any business as may be specified by a (Ethics Commission); or (c) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

Firm Bid - A bid that binds the bidder until a stipulated time of expiration.

Fiscal Year - A period of 12 consecutive months selected as a basis for annual financial reporting, planning, or budgeting.

Fixed Price Contract - A contract which provides for a firm price, subject to any contractual conditions allowing price adjustment, under which the contractor bears the full responsibility for profit or loss.

Fixed Price Contract With Economic Price Adjustment - A contract which provides (usually after an initial period) for price increase/decrease based upon an objective price index incorporated into the contract.

Fixed Price Sale - An offering at a price established by the seller and not subject to negotiation.

Forfeiture of Deposit or Bond - A loss by omission, negligence, or misconduct for the performing of or the failure to perform a particular act, (e.g., not accepting a

contract when an award is made); breach of contract. See "Bid Bond," "Bid Deposit," "Fidelity Bond," "Performance Bond."

Formal Advertising - The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the government is requesting bids on a specific purchase it intends to make. See "Legal Notice." *Note*: "Formal Advertising" as used by the federal government has the specific and narrow meaning of source selection made in terms of a detailed, design type specification and award to the lowest initial price bidder.

Formal Bid or Offer - A bid which must be submitted in a sealed envelope and in conformance with a prescribed format, to be opened at a specified time. See "Sealed Bid."

Forward Purchasing - The purchasing of quantities exceeding immediate needs, e.g., in anticipation of a price increase of future shortage.

Forward Supply Contract - A contract for future supply of definite quantities of materials or services over a fixed period. Quantity specified may be obtained by "draw-off orders," or be delivered at a fixed and predetermined rate set out in the contract.

"Four Corners" Construction - The legal theory holding that unless an act is specifically permitted by statute, e.g., the purchasing law, an administrator may not proceed. See "Liberal Construction."

Fraud - A positive act resulting from willful intent to deceive another with the purpose of depriving him of his rights or property. See "Arbitrary, Capricious and Fraudulent."

Full Cost Recovery Funding - See "Industrial Funding."

Functional Specifications - A type or manner of writing a purchase description characterized by what results are required rather than a generic description of the product or service. See "Design Specification."

General Provisions - Governing clauses for all contracts by type of purchase or contract. Clauses devised especially for a given purchase are called special provisions. See "Boiler Plate," "Terms and Conditions."

Generic Name - Related to or characteristic of whole group or class; not protected by trademark registration.

Generic Specification - See "Design Specification."

Goods - Anything purchased other than services or real property. See "Uniform Commercial Code."

Governmental Body - Any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch (of a jurisdiction).(MPC) Grant - The furnishing by the (jurisdiction) of assistance, whether financial or otherwise, to any person to support a program authorized by law. (MPC)

Gratuitous Offer - An uninvited condition or provision submitted by a bidder or offeror; an unnecessary or unwarranted submission.

Gratuity - A payment, loan, subscription, advance, deposit of monies, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. (MPC) See "Code of Ethics," "Procurement Ethics."

Gross Negligence - The degree of lack of care that shows a reckless disregard for life or safety, or that indicates a conscious indifference to the rights of others.

Guarantee - To warrant, stand behind, or insure performance or quality, as a supplier in relation to his product; a warranty. See "Warranty."

Hold Harmless Clause - Contractual clause requiring the contractor to assume sole liability in any actions brought against the contract and absolving the jurisdiction from any responsibility. Case law indicates that the courts do not accept this clause.

Identical Bid - A bid that is the same in all salient respects with another bid.

Immediate Family - A spouse, children, parents, brothers and sisters, and such other relatives as may be designated by the [jurisdiction]. (MPC) See "Code of Ethics," "Procurement Ethics."

Imprest - Funds set aside as a cash reserve for expenditures made in accordance with established policies and controls; petty cash.

Improper Influence - Effect of actions of one person over the actions of another so as to prevent the proper exercise of the latter's duties.

Industrial Funding - Full financing of program activities out of sale of goods or services furnished; full cost recovery funding.

Ineligible Bidder - A supplier or prospective supplier who, by reason of financial instability, unsatisfactory reputation, poor history of performance, or other deficiency, does meet the qualifications for placement on the bidder list or for award; also non-responsible bidder.

Informal Bid - An unsealed competitive offer conveyed by letter, telephone, telegram, or other means and under conditions different from those required for formal bidding.

Initial Price - Outlay of money necessary to buy something. Initial price is a proper determinant for award only when the products or services offered, and to be furnished, are essentially identical irrespective of which bidder or offeror receives the award. See "Acquisition Price."

Inspection - Critical examination and/or testing of items to determine whether they have been received in the proper quantity and condition and conform to the applicable specifications.

Inspection Report - A report to inform the purchasing authority of the quality or condition of the items delivered.

In-State (Local) Preference - See "Preference."

Invitation for Bids (IFB) - (1) The solicitation document used for competitive sealed bidding, the customary method used by state and local governments for the purchase of equipment, materials, supplies, and construction. (2) All documents, whether attached or incorporated by reference, utilized for soliciting bids. (MPC)

Item - A product, material, or service.

Labor Surplus Area - A geographical section of concentrated unemployment or underemployment, designated by the U.S. Department of Labor. See "Preference."

Late Bid or Proposal - A bid or proposal received at the place specified in the solicitation after the time designated for all bids or proposals to be received.

Latent Defect - A defect not apparent by ordinary and reasonable inspection at time of receipt or beginning use of a product.

Lead Time - The period of time from date of ordering to date of delivery during which the buyer must reasonably allow the vendor to prepare goods for shipment; period of time needed by central purchasing to process agency purchase requisitions for bidding and award of a contract.

Lease - A contract conveying from one person (lessor) to another (lessee) use of real estate or personal property for a designated period of time in return for rental payment or other compensation.

Lease-Purchase Agreement - A lease contract containing a purchase option in which the lessee's periodic payments or parts thereof may be applied to serve both as the rental obligation and as installments for acquiring ownership of the property upon lessee exercising the purchase option; a conditional sales contract.

Legal Notice - Notice of a proposed purchase as required by law. Depending upon the legal requirement, notice may be satisfied by posting an announcement of the purchase in a public place, notification of the appropriate bidders from the bidders list, formal advertisement in a newspaper or newspapers, or a combination of these methods. See "Formal Advertising."

Liberal Construction - The legal theory holding that if some act is not specifically prohibited by statute law, e.g., the purchasing law, an administrator may take such action as a ministerial duty. See "Four Corners Construction."

License - A non-transferable permission granted by a government or other authority to perform an act or to engage in an enterprise that is restricted or regulated by law.

Life-Cycle Costing - A procurement technique which takes into account demonstrable and documented operating, maintenance, the cost of money, and other costs of ownership and usage, and resale or residual value in addition to acquisition price in making an award on low total cost.

Limited Trades Work - Repair and maintenance of existing structures, buildings or real property not requiring the professional services of an architect or engineer. These are usually considered proprietary or support services procured through the purchasing program. See "Construction."

Line Item - A procurement item specified in an Invitation for Bids for which the bidder is asked to tender an individual price and which, under the terms of the invitation, is usually susceptible to a separate contract award.

Liquidated Damages - An amount of money, designated in a solicitation and as part of a contract, to be calculated on a per diem or other basis and paid upon default of a contract. See "Penalty Clause."

List Price - The published price at which a seller offers an item for sale.

Local Preference - See "Preference."

Local Purchase - A purchase made directly by an agency, apart from the central purchasing office, for its own use or for the use of another agency logistically supported by it.

Lowest and Best Bid - See "Lowest Responsible Bidder."

Lowest (Responsive and) Responsible Bidder - Originally, the bidder submitting the lowest initial price and capable of performing the proposed contract. Under modern purchasing concepts, often construed as generally the same as the "lowest responsive and responsible bidder," or the bidder who submits the "lowest and best bid" or the "most advantageous bid, price, and other factors considered." For clarity and accuracy, the recommended provision for determining award is the "responsive and responsible bidder whose bid is most economical for the purpose intended, according to criteria set forth in the solicitation." See also "Responsive Bidder" and 'Responsible Bidder."

Lump Sum - A single price as requested or offered on a solicitation for a group of items, without or in addition to individual item prices; a lot price.

Make-Or-Buy - The decision process for determination of whether a jurisdiction produces a material or service in-house or seeks an alternate source of delivery.

Management Services - Managerial/ ministerial functions performed by independent contractors assuming governance of the service delivery, the real and personal property, and, in differing contractual formats, the personnel of a government function.

Manual - See "Purchasing Manual."

Manufacturer - One who (1) controls the design and production of an item, or (2) produces an item from crude or fabricated materials, or (3) assembles materials or components, with or without modification, into more complex items.

Market (Noun) - The aggregate of forces that determine the availability prices, and amount of trade in the exchange of goods.

Market (Verb) - To carry out all activities intended to sell a product or service. Includes advertising, packaging, surveying the potential market, etc.

Material(s) - Items required to perform a function or used in a manufacturing process, particularly those incorporated into an end product or consumed in its manufacture.

May - Denotes the permissive. (MPC)

Merit System - A system of selecting and promoting civil servants on the basis of competitive examination or other comparable objective evaluation of their abilities rather than by political appointment. See "Classified Service."

Misrepresentation - A manifestation by words or other conduct that, under the circumstances, amounts to an assertion not in accordance with the facts.

Mistake (in Bid) - A miscalculation in composing a bid resulting in an incorrect price or other term, especially in affecting the bidder's eligibility to be awarded a contract.

Mock-Up - A model, usually full size and constructed of inexpensive material, made for the purpose of studying the construction and use of an article or mechanical device. See "Pilot Model," "Prototype."

Modification - Any formal revision of the terms of a contract.

Monopoly - (1) An exclusive right or power to carry on a particular activity; (2) Ownership or control of the supply of or market for a product or service sufficient to allow

stifling competition, controlling prices, or otherwise restricting trade.

Most-Favored-Customer Clause (MFC) - A condition in a bid solicitation and/or contract to the effect that the contractor shall not offer to others prices lower than those provided in the contract, or if lower prices are offered they must also apply to the subject contract. The use of a "most favored customer" clause impedes competition.

Multiple Award - The award of contracts to two or more bidders for the same or essentially similar items. Appropriate only in situations where the award of a single contract would be impossible or impractical and awards are limited to the least number of suppliers necessary for a workable contract.

Multi-Step Competitive Bidding - A competitive process calling for separate submissions of a technical proposal (which may be negotiated) as the first step or steps of the process followed by a call for non-negotiable competitive price bid as the final step.

Mutual Assent - The state where the parties to a contract agree to all the terms and conditions in the same sense and with the same meaning.

Negligence - The failure to do that which an ordinary, reasonable, prudent person would do, or the doing of some act which an ordinary, prudent person would not do. Reference must always be made to the situation, the circumstances, and the knowledge of the parties.

Negotiated Award - See "Competitive Negotiation."

Negotiated Sale - An offering without a set price with the purchaser retaining the right to reject any or all tenders.

Net Price - Price after all discounts, rebates, etc., have been computed or allowed.

Net Terms - See "Discount."

No Bid - A response to an Invitation for Bids stating that the respondent does not wish to submit a bid. In addition to serving as the courtesy of a reply, it can operate to prevent removal from the bidders list for failure to show active interest.

Nonexpendable Supplies - All tangible supplies having an original acquisition cost of over [$xxx] per unit and a probable useful life of more than one year. (MPC)

Nonresponsive Bid - A bid that does not conform to the essential requirements of the Invitation for Bids; nonconforming bid; unresponsive bid.

Obsolete - Out of date; no longer in use or effectively usable.

Obsolete Property - Inventory without utility, due usually to technological development and/or normal wear-and-tear. Obsolete property may be "scrap" with no value except for its basic material content, or "salvage" with some value because parts can be recovered and reused.

Offer - The act of one person that gives another person the legal power to create a contract to which both of them are parties; to perform such an act.

Offeror - See "Proposer."

Official Responsibility - Direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, personally or through subordinates, to approve, disapprove, or otherwise direct action in the name of a public or private entity.

Oligopoly - A market situation in which a few companies control or dominate the market for a product or service.

Open-Account Purchase - A purchase made by a buyer who has established credit with the seller. Payment terms are usually stated to require payment of invoice on or before a specific date or dates; also, to require payment of invoice in full, or less a certain percentage for prompt payment. Such terms are agreed upon between buyer and seller prior to or at the time of establishing the account. See "Blanket Order."

Open-End Contract - A contract in which quantity, duration, or both are not specified. See "Price Agreements." "Blanket Orders," "Requirements Contracts," and "Term Contracts" should specify either quantity or duration.

Open-Market Purchase - A purchase made other than under a schedule or term contract, or made by negotiation following rejection of all bids when satisfactory bids cannot be obtained.

Option - The right, acquired for consideration, to buy or sell something at fixed price within a specified time.

Option to Extend - See "Extension."

Option to Renew - A contract clause that allows a party to elect to reinstitute the contract for an additional term; in public contracting, where competitive bidding is a required exercise of the option must rest solely with the purchaser.

Or Equal - See "Equal, Or Equal."

Order - A request or command issued to a supplier for goods or services at a specified price or agreed basis for payment. See "Uniform Commercial Code."

Order Level - The level of stock of any item at which an order is initiated for more supplies of that item. See "Economic Order Quantity."

Order Record - A central register of orders issued.

Packing List - A document which intemizes in detail the contents of a particular package or shipment.

Partnership - An agreement under which two or more persons agree to carry on a business, sharing in the profits and losses by an agreed to proportion, but each being liable for losses to the extent of all of his personal assets.

Patent - A grant made by a government to an inventor, which gives the inventor the exclusive right to make, use, license, and sell the invention for a period of time.

Patent Clearance - A letter or other formal communication stating that the reporting requirements of the patent rights clause contained in a contract have been complied with by the contract.

Penalty Clause - A clause in a contract specifying the sum of money to be paid if the contractor defaults on the terms of the contract, particularly in respect to time. See "Liquidated Damages."

Performance Bond - A contract of guaranty executed subsequent to award by a successful bidder to protect the government from loss due to contractor inability to complete the contract as agreed. See "Forfeiture of Deposit or Bond."

Performance Purchasing - A results-directed approach characterized by writing purchase descriptions or specifications with emphasis on what an item is to do rather than

how it is to be made, and by evaluating bids in terms of how well an item serves the intended purpose and the costs involved; developing bid evaluation criteria which result in greater economy and value.

Performance Record - Record to indicate a supplier's ability to keep delivery promises and reliability, together with consistency of quality and performance of the products and services furnished.

Performance Specification - A specification describing the performance characteristics sought in a product or service; a purchase description accenting performance over design; a functional rather than a generic or physical specification. See "Design Specification," "Functional Specification."

Perishable Goods - Goods which are subject to spoilage within a relatively short time.

Person - Any business, individual, union, committee, club, other organization, or group of individuals. (MPC)

Personal Property - Everything that is not real property, is subject to ownership, and has exchangeable value.

Personal Services - Infrequent, technical, or unique functions performed by an independent entrepreneur. Personal services contracts almost always run to individuals rather than partnerships, firms or corporations, and the services performed frequently are not the full-time occupation of the contractor. Examples of personal services contracts include translation, technical editing, technical appraisal.

Petty Cash - See "Imprest Funds."

Pilot Model - A model, perhaps handmade, used in production planning or to submit for approval of the purchaser as representative of the product that will be supplied against a contract. See "Prototype."

Political Subdivision - A subdivision of a State which has been delegated certain functions of local government, and which can include counties, cities, towns, village hamlets, boroughs, and parishes.

Pre-Bid Conference - A meeting scheduled in a solicitation for the purpose of providing clarification as needed. Substantive questions raised at a pre-bid conference are answered in writing and may modify the solicitation. In some jurisdictions, the conference may be mandatory at the discretion of the Purchasing Manager.

Pre-Solicitation Conference - An informal meeting convened by a Purchasing Manager inviting comments and suggestions from selected vendors on the draft of a proposed solicitation. Used for high tech and complex service transactions.

Preference - An advantage in consideration for award of a contract granted to a bidder by reason of the bidder's residence, business location, origin of product offered, business classification (e.g., small business), or other reason; generally inconsistent with impartiality in awarding public contracts. See "In-State Preference," "Local Preference," "Buy American," "State Use Law."

Prepaid - A term denoting that transportation charges have been or are to be paid at the point of shipment.

Pre-qualification (of Bidders) - The screening of potential suppliers in which a purchaser considers such factors as financial capability, reputation, management, etc., in order to develop a list of prospective bidders qualified to be sent invitations to bid. See "Bidders List," "Qualified Bidder."

Price - The amount of money that will purchase a definite quantity, weight, or other measure of a commodity or service.

Price Adjustment Clause - A condition in a solicitation and resultant contract that allows the price under the contract to decrease or increase under defined conditions; the condition should provide for the purchaser to cancel any individual item affected, or the contract, if a request for increase is not acceptable. See "Fixed Price Contract with Economic Price Adjustment."

Price Agreement - An agreement in which a purchaser negotiates with a vendor to furnish items at a predetermined price. Usually it is an informal arrangement involving a minimum number of units, orders place directly with the vendor by the purchaser, and a limited duration of time.

Price at Time of Delivery - A term used in sales contracts when a seller will not give a firm price or agree to an escalator clause, but will only agree to invoice at the price charged to like customers on the day the goods in question are shipped or delivered.

Price Competition - The basis for awarding a contract solely on the consideration of price as submitted on competitive bids or as negotiated under competitive proposals.

Price Control - The fixing or restricting of prices, especially by a governmental agency.

Price Escalation Clause - See "Price Adjustment Clause."

Price Fixing - Agreements between competitors to sell at the same price, to adopt formulas or the computation of selling prices, to maintain specified discounts, to maintain predetermined price differentials between different quantities, types, or sizes of products, or other means of setting prices charged to purchasers. See "Collusive Bidding," "Corrupt Combination," "Collusion," or "Conspiracy in Restraint of Trade."

Price List - See "Price Schedule."

Price Maintenance - The establishment by a manufacturer or secondary seller of a price for an item below which he will not sell or permit the product to be sold.

Price Protection - An understanding or agreement between a purchaser and seller, or extended by a seller to a purchaser, to maintain a price against increase, or to grant the purchaser any reduction in price the vendor may establish on the goods in question, prior to shipment of the purchaser's order.

Price Rebate - A refund or allowance on price, given usually after the completion of a contract and frequently based on some relationship with the business volume.

Price Schedule - A list of prices applying to varying quantities or kinds of goods.

Principal - One who employs an agent; a person who has authorized another to act on his account and subject to his control. See "Agent," "Purchasing Agent."

Priority - (1) A degree of precedence given to a requisition, order, or contract to obtain completion, delivery, or performance on a particular date at the expense, if necessary, of competing demands upon the same supplier or production facility. (2) Weighting or consideration of evaluation factors.

Privatization - The divestiture of a government program including control and management as well as real and personal property to private entrepenuers. Privatization is frequently misused as a synonym for contracting for services.

Procurement - The procedures for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment. The acts of preparing specifications, evaluating bids or proposals, making awards, and administering contracts are involved; in some contexts property management is implied. See "Purchasing Cycle."

Procurement Officer - Any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within limits of authority. (MPC)

Professional Services - Infrequent, technical, and/or unique functions performed by independent contractors whose occupation is the rendering of such services. While not limited to licentiates, the services are considered "professional," and the contract may run to partnerships, firms, or corporations as well as individuals. Examples of professional services include medicine and the medical arts, architectural and engineering services, management and systems consultation, research, and the performing arts.

Program - A plan of action to accomplish a defined objective of an organization's responsibility.

Proposal - The executed document submitted by an offeror in response to a Request for Proposal [and the basis for subsequent negotiation].

Proposal Evaluation Criteria - Factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price and other important considerations used to evaluate which proposer in a competitive negotiation has made the most advantageous offer.

Proposer - A person submitting a proposal in response to a Request for Proposal (RFP).

Proprietary Article - An item made and marketed by a person or persons having exclusive right to manufacture or sell it.

Proprietary Information - Information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep from general public view in order to maintain competitive capabilities in the market. See "Trade Secret."

Proprietary (Support) Services - Work by independent contractors where the process is more important than the product, if any. Proprietary service contracts usually run to partnerships, firms, or corporations rather than individuals and are usually awarded through competition. Examples of proprietary service contracts include janitorial and custodial, protection and security, maintenance and repair, and data processing service bureau.

Protest - A complaint about a governmental action or decision brought by a prospective bidder, a bidder, a contractor, or other interested party to the appropriate administrative section with the intention of achieving a remedial result. See "Dispute," "Resolution."

Prototype - A model suitable for evaluation as to design, construction, workmanship, performance, and compliance with specifications. See "Pilot Model."

Public Bid Opening - The process of opening and reading bids, conducted at the time and place specified in the Invitation for Bids and/or the advertisement, and in the presence of anyone who wishes to attend. See "Bid Opening."

Public Policy - That which is deemed by administrators to represent the public interest, or by courts to be general and well-settled public opinion relating to the duties of men and government.

Public Procurement Unit - Either a local or state public procurement unit. (MPC)

Public Purchasing Official - The jurisdiction's Purchasing Agent or the senior designee of the Purchasing Agent, in charge of the jurisdiction's central purchasing program. See "Purchasing Agent."

Public Record - Information about government activities that is available for public inspection. See "Proprietary Information."

Punitive Termination - Termination at the discretion of the jurisdiction for failure of the contractor to perform with no liability on the part of the jurisdiction. See "Termination for Convenience," "Convenience Termination Clause."

Purchase Description - The words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made part of, the solicitation. (MPC) Unless the context requires otherwise, the terms "purchase description," "purchase specification," and "specification" may be used interchangeably.

Purchase Order - A purchaser's document to formalize a purchase transaction with a vendor. The purchase order should contain statements as to the quantity, description, and price of the goods or services ordered; applicable terms as to payment, discounts, date of performance, and transportation; and other factors or suitable references pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.

Purchase Request - (1) Information transmitted by a using agency requesting the central purchasing office to effect a contract for a particular need or group of needs. The request may include, but is not limited to, a performance or technical description of the requested item, delivery schedule, transportation mode, criteria for evaluation, suggested sources of supply, and information related to the making of any written determination required by policy or procedure. (2) That document whereby a Using Agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery, criteria for evaluation, suggested sources. (MPC) See "Requisition," "Request for Purchasing Authority."

Purchasing Agent - An administrator vested by law to review appropriateness of purchase requests, prepare solicitations, obtain bids or proposals, evaluate and award. However, in some jurisdictions this administrator is the Secretary of Administration, Secretary of General Services, or similar appointee who, while vested by law with the

responsibility/accountability for the purchasing program, delegates the operational responsibility/authority to a designee.

Purchasing Cycle - The full cycle of activities carried out by a purchasing department in the acquisition of goods and services. See "Procurement."

Purchasing Ethics - Moral concepts and practices based on the principle that the public interest is paramount, applicable to the personnel of the purchasing department and all other persons involved in the purchasing process, particularly with respect to the expenditure of government funds and relationships between public employees and sellers. See "Code of Ethics."

Purchasing Manager - A journeyman public purchaser with responsibility for a wide scope of commodities and/or services and authority to act for the jurisdiction in these areas. See "Purchasing Agent," "Buyer," "Public Purchasing Official."

Purchasing Manuals - A formal collection of information and instructions relative to purchasing practices and procedures of the jurisdiction. There may be separate editions for the Central Purchasing Authority, the Using Agencies, and vendors.

Purchasing Official - The de facto "Purchasing Agent" of a jurisdiction who may be the designee of an administrator who, by law, is the Agent of the jurisdiction. See "Purchasing Agent."

Purchasing, Public - The process of obtaining goods and services for public purposes in accordance with law and procedures intended to provide for the economical expenditure of public funds.

Qualified Bidder - A bidder determined by the government to meet standards of business competence, reputation, financial ability, and product quality for placement on a list of prospective bidders. See "Bidders List," 'Prequalification of Bidders."

Qualified Products List - A specification developed by evaluating brands and models of various manufacturers of an item and listing those determined to be acceptable as eligible to be offered on the next Invitation for Bids; on Approved Brands List.

Quality Assurance - A planned and systematic series of actions designed to provide adequate confidence that a product purchased or to be purchased will perform satisfactorily in service.

Quality Control - Practices and procedures necessary to ensure appropriate quality and performance of goods produced or received.

Quantity Discount - An allowance determined by the quantity or value of a purchase. See "Discount."

Quotation - A statement of price, terms of sale, and description of goods or services offered by a prospective seller to a prospective purchaser, usually for purchases below the amount requiring formal bidding; the stating of the current price of a commodity, or the price so stated.

Receiving Report - A form used by a receiving unit to inform others, such as the purchasing and accounting departments, of the receipt of goods purchased.

Regulation - A government body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements (in accord with statute/ordinance law.) (MPC) See "Rule."

Renegotiation - Deliberation, discussion, or conference to change or amend the terms of an existing agreement.

Renew, Option To - See "Option to Renew."

Reordering Level - The stock level at which a requisition for the replenishment of the stock should be initiated. See "Economic Order Quantity (EOQ)."

Repudiation of Contract - A positive and unequivocal refusal to perform a contract.

Request for Information (RFI) - The document used in informal, uncompetitive solicitation of information, data, comments, or reactions from possible suppliers preceding the issuance of a Request for Proposals or a multi-step bidding procedure.

Request for Proposal (RFP) - (1) All documents, whether attached or incorporated by reference, utilized for soliciting (competitive) proposals. (MPC) The RFP procedure permits negotiation of proposals and prices as distinguished from competitive bidding and an Invitation for Bids. (2) The solicitation document used in the competitive negotiation process. The procedure allows changes to be made after proposals are opened and contemplates that the nature of the proposals and/or prices offered will be negotiated prior to award.

Request for Purchasing Authority - An internal document by which a using agency requests central purchasing to delegate a procurement to the using agency. See "Purchasing Request," "Requisition."

Request for Quotation (RFQ) - The document generally used for seeking competition on small purchases or on any purchase lower than the amount that requires competitive sealed bidding. Can be used for obtaining price and delivery information for sole-source and emergencies.

Requirements Contract - An indefinite quantity contract in which a purchaser is obligated to order and a contractor is obligated to supply all of the purchaser's normal requirements that arise for an item or items within the specified period of the contract. See "Blanket Order," "Term Contracting."

Requisition - An internal document by which a using agency requests the purchasing department to initiate a procurement. May also be a form used for obtaining supplies from a storeroom or warehouse. See "Purchase Request."

Research and Development - A process by which new products or new product forms are created; precedes production.

Resolution - Appropriate administrative action achieving disposition of a protest or dispute.

Responsible Bidder or Offeror - A person who has the capability in all respects to perform in full the contract requirements, and the integrity and reliability which will assure good faith performance. (MPC)

Responsive Bidder - (1) A person who has submitted a bid which conforms in all material respects to the Invitation for Bids. (MPC) (2) One whose bid conforms in all material respects to the terms and conditions, the specifications and other requirements of the IFB.

Restraint of Trade - The effect of an act, contract, combination, or conspiracy which eliminates or stifles competition, effects a monopoly, artificially maintains prices, or otherwise hampers or obstructs the course of trade and commerce as it would be carried on if left to the flow of natural and economic forces.

Restrictive Specification - A specification or purchase description that unnecessarily limits competition by precluding items that would be capable of satisfying the intended need.

Rule - A regulation, standard, statement of policy, or order of general application having the effect of law, issued by a government agency to implement, interpret, or make statute law specific. See "Administrative Law," "Regulation."

Rules and Regulations - Governing precepts and procedures made by an administrative body or agency under legislative authority that usually have the force and effect of law. See "Administrative Law."

Salvage - Property that is no longer useful as a unit in its present condition but has some value in addition to its value as scrap, usually because parts from it may be recovered and reused. Sample - See "Bid Sample."

Schedule Purchase - A purchase for which a bid opening date is prescheduled, such as quarterly, so that using agencies' requirements for the period covered by the ensuing contract can be consolidated for volume purchasing under one Invitation for Bids.

Scrap - Property that has no value except for its basic material content.

Sealed Bid - A bid which has been submitted in a sealed envelope to prevent its contents being revealed or known before the deadline for the submission of all bids; usually required by law or rule on major procurements, to enhance fair competition.

Seller's Market - A market condition where demand is greater than supply, sellers have greater control over prices and terms of sale, and prices tend to be high or rising.

Service Contract - A contract that calls for a contractor's time and effort rather than for a concrete end product. The term as defined here does not include employment agreements or collective bargaining agreements. (MPC)

Services - The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term does not include employment/collective bargaining agreements. (MPC) See "Personal Services," "Proprietary (Support) Services," "Professional Services," "Client Services," "Management Services."

Shall - Denotes the imperative. (MPC)

Shipping List - A memorandum listing all items included in one shipment or shipped at one time.

Site-Inspection - The requirement in a solicitation that the potential bidders or offerors visit the physical location where the contract is to be performed to become familiar with site conditions. Where this is a critical element, site inspection should be mandatory.

Small Business - A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation. (MPC)

Sole-Source Procurement - An award for a commodity or service to the only known capable supplier, occasioned by the unique nature of the requirement, the supplier, or market conditions.

Solicitation - The process of notifying prospective bidders or offerors that the jurisdictions wishes to receive bids for furnishing goods or services. The process may consist of public advertising, mailing Invitations for Bids, posting notices, telephone or telegraph messages to prospective bidders, or all of these.

Source Selection - The technique of appropriate selection of the method of solicitation, i.e., competitive sealed bidding, multi-step competitive sealed bidding, competitive negotiation, small purchase procedure, sole source, or emergency purchase.

Sovereign Immunity - The principle which absolves the sovereign (state, municipality, county) from responding in damages for past injuries to another party. Since 1900 case law has eroded this principle until it has become a questionable defense for government.

Specification - A description of what the purchaser seeks to buy, and consequently, what a bidder must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of, a supply or service. It may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery. A purchase description.

Specifications Committee - A committee which advises and assists the central purchasing authority in establishing specifications. Often such a committee includes representatives with expertise from using agencies and specializes in a particular product area. A committee may also contribute advice and assistance in the development of standards.

Spot Purchase - A one-time purchase occasioned by a small requirement, an unusual circumstance, or to take advantage of a favorable market condition.

Standard - A characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or interchangeability with other products, etc., is generally accepted by producers and by users of the item as a required characteristic of all items for the designed purpose.

Standard Package Discount - A price allowance applied to goods supplied in the vendor's regular quantity packaging. See "Discount."

Standard Specification - A specification established through a prescribed process and used for all or most purchases of the item involved.

Standardization (of Specifications) - The process of examining characteristics and needs for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for that purpose.

Standards Committee - A committee usually composed of policy level officials whose purpose is to advise and assist the central purchasing authority in establishing product and use standards and, in some cases, standard specifications.

Start-Up Conference - A formal meeting convened by a Purchasing Manager, usually if there is an extended period from award of contract to start-up, for the purpose of review of the responsibilities of the contractor and the jurisdiction under the contract.

State Use Law(s) - Statute law in over 50% of the states requiring purchase from Corrections Industries, Workshops for the Blind, etc., by state agencies and, in some cases, by municipalities as well. See "Preference."

Statement-Of-Work - The product of organizational analysis, activity analysis, data gathering, performance analysis, and cost analysis identifying the specifics which address the need of the Using Agency and how that need may be met.

Steering Committee - A committee which assists in contract administration usually in a management or consulting contract.

Stock - A supply of goods maintained on hand in a supply system to meet anticipated demands.

Stock Control - Control of the level of stock by control over the movement of goods into and out of stores. See "Economic Order Quantity (EOQ)."

Stock Record - A record kept of items or materials in stock, usually located at a central point and showing stock level position.

Subcontractor - Any person undertaking part of the work under the terms of the contract, by virtue of an agreement with the contractor, who, prior to such undertaking, receives the consent (in writing) (of the surety and) approval of the jurisdiction. See "Assignment."

Supplemental Agreement - A contract addendum accomplished by mutual action of the parties, permissible under emergency purchases, construction work, sole source procurement, and otherwise where competition is not required.

Supplier - An actual or potential contractor; a vendor.

Supplies - (1) Customarily, items that are consumed or expended in the course of being used, as distinguished from equipment and materials; but in some purchasing terminology, all items except construction and services. (2) All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land. (MPC)

Support Services - See "Proprietary Services."

Surplus Property - Inventory not needed by the owning agency or by other agencies at the present time or in the foreseeable future.

Surplus Supplies - Any supplies other than expendable supplies no longer having any use to the [jurisdiction]. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life. (MPC)

Suspension - See "Debarment."

Tabulation of Bids - A recording of bidders and abstract of their bids listing items offered, prices, deliveries, etc., in response to a specific solicitation, made for purposes of comparison and recordkeeping; an abstract.

Taxonomy - The science of classification. Taxonomy is a useful application in the draft of a Statement of Work.

Term Contracting - A technique by which a source of supply is established for a specific period of time. Term contracts characteristically are established through competitive sealed bidding and usually are based on indefinite quantities to be ordered "as needed," although such contracts can specify definite quantities with deliveries extended over the contract period. See "Blanket Order," "Open-end Contract," "Price Agreement," "Requirements Contract."

Termination for Convenience - See "Convenience Termination Clause."

Terms and Conditions - A general reference applied to the provisions under which bids must be submitted and which are applicable to most purchase contracts. See "Boiler Plate."

Terms of Payment - Purchase transactions require payment for the goods or services received, and with exception of an unusual exchange or barter agreement there are three basic payment terms: cash, open account, and secured account.

Testing - Determination of the physical, chemical, or performance characteristics of items. Testing may be conducted in connection with developing specifications and standards, making comparative evaluations of products offered on bids, and ascertaining compliance with specifications before or after a contract award.

Title - The means whereby a person's ownership of property is established.

Token Bid - A perfunctory offer by a bidder with no serious intent of being the successful bidder; usually submitted to maintain eligibility for the bidders list or as an act of collusion.

Total Supply - A concept of purchasing with the objective of advanced planning which provides for the broadest scope of purchasing and purchasing-related activities to reduce costs, improve effectiveness, and increase operational efficiency. Total supply is concerned not only with acquisition, but with requirements planning, logistics, and property management.

Trade Discount - A deduction from an established price for items or services that is offered or allowed by the seller and not conditioned upon prompt payment. See "Discount."

Trade Name - See "Brand Name."

Trade Secret - Any aspect of a business or its operation not made available to competitors. See "Proprietary Information."

Trademark - A distinguishing sign, symbol, mark, word, or arrangement of words in the form of a label or other indication, that is adopted and used by a manufacturer or distributor to designate his particular goods, and which no other person has the legal right to use.

Ultra Vires Action - An action beyond the power or purpose of a corporation or government agency, but not an action which is merely performed in an unauthorized manner or without authority.

Uniform Commercial Code - Uniform statute law adopted by states for consistency and modernity in law governing commercial transactions.

Unit Price - The price for a given unit of a good or service, e.g., price per ton, labor hour, foot.

Unit Price Extension - The calculation of the total price of an item by multiplying the price per unit by the number of units requested or purchased.

Unsuccessful Bidder or Offeror - One whose bid or proposal is not accepted and award is made to another.

Using Agency - Any governmental body of the [jurisdiction] which utilizes any supplies, services or construction procured under (the purchasing law). (MPC)

Utility - The value of goods and services to a program giving consideration to quality, quantity, and price.

Value - Intrinsic worth; the amount of money for which goods or services can be exchanged. See "Uniform Commercial Code."

Value Analysis - An organized effort to analyze the function(s) of products, systems specifications and standards, and practices and procedures, intended to satisfy the required function(s) in the most economical manner.

Vendor - A supplier.

Vendor File - The accumulated record maintained by the central purchasing authority of information relevant to a bidder's or contractor's business relationship with the jurisdiction, including application for inclusion on the bidders list, record of performance under contracts, pertinent correspondence, and the results of any inquiries or analyses made for specific purposes.

Void - Without legal effect, unenforceable.

Volume Purchasing - See "Bulk Purchasing."

Voluntary Consensus Standards - Standards, especially for procurement purposes, developed through voluntary participation of interested parties including producers, users and consumers, and representatives variously from government and education. Development and use of such standards is voluntary.

Waiver of Bid(s) - A process authorized by law or rule whereby a government purchasing office may procure items without competitive bidding procedures because of unique circumstances related to a particular need or procurement; also "Waiver of Competition."

Waiver of Mistake or Informality - The act of disregarding errors or technical nonconformities in the bid which do not go to the substance of the bid and will not adversely affect the competition between bidders.

Warranty - A representation of utility, condition, and durability made by a bidder or offeror for a product offered. See "Guarantee."

Appendix E
Wisconsin Small Businesses: Economic Impact of Selling To the State of Wisconsin

AS YOU ANSWER THE QUESTIONS IN THE SURVEY:

- *Include all sales to the State of Wisconsin, any of its agencies and departments, including the University.*
- *Include sales during calendar year 1986 (January 1 - December 31, 1986).*

1. What year did this business begin? _____

2. In which of the years listed below was your business a vendor to the State? (Circle the number next to each year that applies.)

1 1986	6 1981
2 1985	7 1980
3 1884	8 1979
4 1983	9 1978
5 1982	10 1977

3. Please circle the number next to the word that best describes your major business activity. (Circle one.)
   1 Retail
   2 Wholesale
   3 Distributor
   4 Service
   5 Manufacturing
   6 Construction
   7 Other (Please specify.) _____

4. How did your business learn about becoming a vendor to the State? (Circle all that apply.)
   1 Local Chamber of Commerce
   2 Official bid notice in *Milwaukee Sentinel*
   3 Referral by another business
   4 State Procurement presentation
   5 WISBID (Wisconsin Bid Network)
   6 Trade or professional association
   7 Do not recall
   8 Other (Please specify.) _____

5. How many times did your business bid for State business in 1986? _____

6. How many bids for State business were successful in 1986? _____

7. Does your business generally bid higher or lower for State business than it does for private industry? (Circle one.)
   1 Bid higher
   2 Bid lower
   3 No difference (go to Question 9)

8. How much higher or lower were your successful bids to the State compared to your bids for private industry? (Circle one.)

1 0 to 5% higher	6 0 to 5% lower
2 6 to 10% higher	7 6 to 10% lower
3 11 to 15% higher	8 11 to 15% lower
4 16 to 20% higher	9 16 to 20% lower
5 More than 20% higher	10 More than 20% lower

9. How satisfied are you with being a vendor to the State? (Circle the number that best represents your level of satisfaction.)

Greatly Dissatisfied							Greatly Satisfied
1	2	3	4	5	6	7	

10. Do you think there are advantages in doing business with the State?
    1 No 2 Yes

11. If yes, what are the advantages? (Circle all that apply.)
    1 Pays on time
    2 Large volume orders
    3 Low risk customer
    4 Source of steady business
    5 Reputation as State vendor helps to get other business
    6 Other (Please specify.) _____

12. Did your business encounter problems in doing business with the State?
    1 No 2 Yes

13. If yes, what problems did your business encounter? (Circle all that apply.)
    1 Too much paperwork
    2 State payment is slow
    3 Bid forms are complicated
    4 No consideration for past performance
    5 Price, not quality, gets the contract
    6 Don't know who to contact with questions
    7 Other (Please specify.) _____

14. How many employees did your business have in 1986?
    ____ Full-time employees
    ____ Part-time employees

15. Did your business add new employees as a result of sales to the State in 1986? (Circle one.)
    1 No 2 Yes If yes, how many:
    ____ Full-time employees
    ____ Part-time employees

16. Did sales to the State in 1986 prevent layoffs of employees? (Circle one.)
    1 No 2 Yes If yes, how many:
    ____ Full-time employees
    ____ Part-time employees

17. What were the total gross sales of your business in 1986? $_____

18. Estimate the total gross sales of your business to the State in 1986. $_____

19. Estimate the profit on total 1986 sales. Use profit before owners compensation, taxes, and interest. (Circle one.)
    1 0 to 2.5%
    2 2.6 to 5.5%
    3 5.6 to 7.5%
    4. 7.6 to 10.0%
    5 10.1 to 15.0%
    6 15.1 to 25.0%
    7 25.1% or greater

20. Estimate the profit on 1986 sales to the State. Use profit before owners compensation, taxes, and interest. (Circle one.)
    1 0 to 2.5%
    2 2.6 to 5.5%
    3 5.6 to 7.5%
    4 7.6 to 10.0%
    5 10.1 to 15.0%
    6 15.1 to 25.0%
    7 25.1% or greater

21. What would make it easier for your business to do business with the State? _____

_____

_____

_____

_____

_____

SUMMARY

This study is authorized by the State of Wisconsin Department of Administration. The purpose of the research is to determine the economic impact of selling to the State on Wisconsin's small businesses.

The State is interested in enhancing economic development and wishes to consider improvements to the procurement process for small business vendors as a method of aiding economic development.

Major hypotheses guiding this study are presented here in abbreviated form.

1. Being a vendor to the State has positive economic impact on small businesses.
2. The level of economic impact on individual businesses varies.
3. Small businesses bid lower for State business than they do for private industry.
4. Profit margins on sales to the State are lower than profit margins on total sales.
5. Small businesses satisfaction is influenced by a variety of factors.
6. Small businesses experience recurring, common problems in selling to the State.

Data from the study were analyzed using histograms and cross tabulations.

Key findings from the study relating to economic impact are highlighted below. They are described in greater detail in the body of this report.

Profit: Profit levels on sales to the State are lower than profit levels on total overall sales. State sales contribute less than 1% of total profit for eight out of ten businesses.

Employment: There is no real impact from 1986 sales to the State on employment, as measured by added employment or layoffs prevented. On average, less than one employee for every four businesses is supported by sales to the State.

Proportion of State Sales: 90% of the businesses have State sales which are 5% or less of their total sales.

Bids: Four out of ten businesses bid lower for State contracts and five out of ten businesses bid no differently.

Conclusions:

- The data from this study do not provide evidence of major positive economic impact with regard to profit, employment, or proportion of State sales to a business's total sales.
- The level of economic impact varies by type of business, size of business, and amount of sales to the State.
- 70% of businesses believe there are advantages to selling to the State. ½o Nearly one-half of businesses encountered problems in selling to the State.
- Twice as many businesses reported being satisfied as reported being dissatisfied with selling to the State.

INTRODUCTION

This study was undertaken in response to a request from the State Council on Small and Minority Business Opportunities to the State Department of Administration (DOA). Economic development is a priority within State government. State procurement is seen as a way of enhancing economic development.

The DOA is interested in making the State procurement program more accessible to Wisconsin small businesses. By identifying problems small businesses encounter as vendors to the State, the DOA may be able to improve the procurement process for current small business vendors and identify how to attract new small business vendors.

The research targets Wisconsin small businesses.[1] To be considered a small business for the purpose of this study, a business must have reported less than $1.5 million in gross sales in calendar year 1986. To be considered a vendor to the State, a business must have sold to the State during fiscal year 1986 (July 1, 1985 - June 30, 1986).

This research project has two main objectives. The first is to study the economic impact on Wisconsin small businesses who are vendors to the State. The other main objective is to identify problems small businesses encounter in vending to the State. Secondary objectives are to identify how satisfied small businesses are with the process of selling to the State and to identify advantages small businesses perceive in selling to the State.

Six major hypotheses guide this study:

1. Being a vendor to the State has positive economic impact on small businesses, as measured by:
   a. contribution to total gross profit of the business
   b. employment
   c. the proportion of employment supported by selling to the State.
2. The level of economic impact of selling to the State will vary by:
   a. type of business
   b. size of business
   c. amount of sales to the State.
3. Small businesses bid lower for State business than they do for private industry.
4. Profit margins on sales to the State are lower than profit margins on total sales.
5. Small business satisfaction is influenced by a variety of factors, including:
   a. profitability
   b. number of years of experience in selling to the State
   c. size of business
   d. type of business
6. Small businesses experience recurring common problems in vending to the State.

Simple random sampling was used to select the businesses surveyed. This means that each small business on the sampling list had an equal chance of being selected to receive a questionnaire. A simple random sample provided the best means of getting a representative sample from the list of Wisconsin small businesses who vend to the State.

Questionnaires were mailed to 1,000 small Wisconsin businesses. Information from returned questionnaires is reported: 1) in total for all businesses; 2) by type of business; and 3) by size of business. Size of business is defined by total gross sales in calendar year 1986. Businesses

are divided into seven categories: retail; wholesale, distributor; service; manufacturing; construction; and combined business (e.g., retail/service).

The analysis of the information from the returned questionnaires uses histograms and cross tabulations. Histograms show how often a particular response occurs for each question. Cross tabulations count the number of cases which fall into categories when looking at two variables together; for example, level of sales to the State and type of business.

In summary, this report is a profile of Wisconsin small businesses who sell to the State of Wisconsin. After reading the report, one should have an understanding of the economic impact State sales may or may not have on Wisconsin's small businesses, what vendors like and dislike about selling to the State, and what type of small businesses sell to the State.

METHODOLOGY AND ANALYSIS

This section of the report outlines research design and methods used to conduct the study. Analysis of the questionnaires is explained and limitations of the study are identified.

What the Research is Designed to Do

This study describes economic impact in terms of employment and profit generated through sales to the State and an estimated number of employees supported by State sales.

In addition, this study describes the problems small businesses face and the advantages they perceive in selling to the State. Further, the study describes vendor satisfaction with selling to the State.

Finally, this study describes characteristics of small businesses selling to the State. These characteristics include type of business, age of business, level of gross sales, number of employees, number of years vending to the State, and bidding behavior.

The bidding behavior studied includes: 1) number of bids made; 2) number of contracts received; and 3) relative difference in bidding price between State business and private business.

The above areas of interest were selected because knowing more about the small business vendor in terms of relative dependency on the State for sales, vendor bidding behaviors, and problems encountered may guide decisions for improving the State procurement program.

Target Population: Who the Research Covers

This study is designed to obtain information about Wisconsin small businesses who are currently selling to the State. The target population does not include small businesses who do not sell to the State, out-of-state small business vendors, nor large business vendors (greater than 1.5 million in annual gross sales).

Sampling Frame: A List of Those Studied

The following steps were used to create the final list from which businesses were chosen to receive mail questionnaires.

1. Two computer tapes from the Department of Revenue were matched against each other. One tape contained business addresses. The second tape contained 1986 gross sales figures for Wisconsin businesses. Businesses with less than $1.5 million in sales whose names were identical for first 10 characters, whose zip codes matched, and who had complete mailing addresses were extracted.
2. This tape was matched against the list of businesses who were vendors to the State in fiscal year 1986. If two businesses had identical addresses, one business was eliminated. This prevented double sampling of a business which may have vended to the State multiple times and had its name spelled differently on the purchase order each time. It also made the probability of any one business being selected equal rather than allowing a higher probability that businesses listed multiple times would be selected.
3. The final extracted list of 2,470 businesses provided the sampling frame.

Sample Selection: Choosing the Actual Businesses in the Study

A total of 1,095 businesses were randomly selected from the sample frame. Given the list available for the study, a simple random sample provided the best means of getting a representative group of small business vendors to the State. A simple random sample was used to select the businesses who were surveyed. This means each small business on the sampling list had a roughly equal chance of being selected to receive a questionnaire.

A sample of 1,095 Wisconsin small businesses was chosen because of general budget limitations. A response rate of roughly 30% was expected. This would provide significant numbers for most analyses. An estimated 30% response rate was based on previous response rates to mail questionnaires by the Small Business Development Center and the impact questions on sensitive topics such as profit and gross sales tend to have on response rate.

The list of 1,095 businesses was further screened to remove charitable institutions, city, county, and state government offices, and businesses already contacted in the pretest stage. Ninety-five businesses were removed, leaving a sample of exactly 1,000 businesses.

Steps were taken to encourage a strong response rate. These steps include: 1)stressing the possible benefits of the survey; 2) asking questions the owners/managers would be interested in answering; 3) asking sensitive questions as inoffensively as possible; 4) guaranteeing confidentiality of responses; and 5) sending a postcard three days before the questionnaire was sent, informing owners/managers that the questionnaire was coming.

Sampling Method: How the Businesses were Contacted

The information for this study was collected from responses to mail questionnaires designed specifically for the study. The questionnaire was addressed to the attention of the owner/manager. Owners/managers were believed to be most likely to have access to the information needed to answer the questions.

Mail questionnaires offer specific advantages over other data collection procedures. One advantage is that owners/managers can complete the questionnaire at a time most convenient to them. For example, businesses relying on orders placed by phone may refuse phone calls which are not business-related. Mail questionnaires give the owners/managers freedom to choose when they want to respond. A second advantage is that mail questionnaires allow businesses time to look up information on sales, profit, and employment levels—information they may not have at their fingertips. These two factors were believed to encourage more thoughtful, complete, and accurate answers to the questions.

The two other most common data collection methods, telephone surveys and personal interviews, were judged less appropriate, given time and resource constraints of this study. Telephone interviews require a large trained staff. Trained callers are required to ensure consistency and accuracy. Resource limitations did not allow hiring such staff. Training and supervising in-house callers would have required more time than the research team was able to dedicate to data collection procedures.

Many of the same resource limitations apply to personal interviews. A personal interview is the most expensive method of survey administration. Staff resources were not adequate to carry out personal interviews. Small business vendors are dispersed throughout the state, and considerable travel expense would have been incurred to interview even a sample of only 100 businesses.

Considering all these factors, mail questionnaires were used because they reached more small businesses at minimal costs. They also were the least disruptive to small business owners/managers.

A brief description of questionnaire development follows. Initial ideas for the questionnaire were obtained in consultation with School of Business faculty, small business owners, and resource contacts at the DOA and DoD. Early versions of the questions were field-tested in personal interviews conducted independently with five small business owners.

In each case, one or two members of the research team made an appointment to meet with the small business owner/manager. At this stage, various questions were tried out as were different versions of questions. The objective was to test if small business owners/managers could answer the questions as asked, would answer the questionnaire, and how they responded to being asked the questions.

At this stage, the questions on problems and advantages were left open-ended so that appropriate answer categories could be suggested by the owners/managers.

After the final draft questionnaire was developed, it was sent to a pretest sample of 60 small business vendors to the State. Follow-up telephone calls were made to the pretest businesses to obtain their answers to the questions. This method shortened the time needed for pretesting the questionnaire. Responses were obtained on 19 of the pretest questionnaires. This information was used to make minor revisions in the final questionnaire.

The final questionnaire was sent by first class mail. First class mail is delivered faster than bulk mail and people are more likely to open their first mail before throwing it away. First class mail also guarantees return of questionnaires sent to businesses at incorrect addresses or to businesses which were no longer in existence.

Analyzing Economic Impact

Measures of economic impact were created using the responses given by businesses. These measures are explained below:

1. *Share*. Share is the proportion of State sales to total sales. It is calculated by dividing a business's State sales by its total sales.
2. *Contribution*. Contribution is the ratio of State profits to total profits.[2]
3. *Employment Dependency*. Employment dependency is the number of employees dependent on State sales. It is calculated by multiplying "Share" (see 1 above) by the number of employees in the business.
4. *Success Rate*. Success rate is the number of contracts a business received divided by the number of bids the business made.
5. *Contract Size*. Contract size is the average size of contract received by a business. It is calculated by dividing the amount of the business's State sales by the total number of contracts the business received.

Analysis of the information from the returned questionnaires uses histograms, pie charts, and cross tabulations. Histograms show how often certain responses occur (e.g., type of business). Cross tabulations count the number of cases which fall into categories when looking at two variables together; for example, level of sales to the state and type of business.

The Results section reports analysis of information provided by the businesses who completed and returned a survey. The Conclusions/Recommendations section comments briefly on the findings.

Limitations to the Study

Limitations are aspects of the study that may influence the findings. Readers should be aware of limitations when interpreting the data and should use caution when generalizing findings of the study to all small business vendors.

Sources of limitations to this study fall into 4 broad categories:

1. *The Data Base which formed the Sample Frame.*
   While the initial response rate was very good, 49 completed questionnaires were eliminated because the businesses had gross sales of more than 1.5 million. Also eliminated were 23 questionnaires in which the businesses claimed they did not sell to the State in 1986. Finally, 41 questionnaires were returned undeliverable as addressed because the businesses had moved or were no longer in business.
2. *Time Constraints.*
   Time constraints prohibited follow-up with businesses who did not return a questionnaire. Ideally, this would be done to see if their answers were significantly different from businesses who returned a questionnaire. For example, it is not known if vendors

with larger State contracts were more likely to return the questionnaire than businesses with smaller contracts. It is also not known if vendors who experienced problems in selling to the State were more likely to return the questionnaire than vendors who had experienced not problems.

3. *The Questionnaire.*
   - It was difficult to measure economic impact on employment when looking at only one year of data. However, the need to keep the questionnaire short (so owners/managers would complete it) and the concern that owners/managers might not recall this information from a number of years ago lead us to restrict the question on employment to a one-year period.
   - Question #14 did not specify that the owner/manager should be included in the number of total employees. If owners/managers did not include themselves, employee numbers may be understated.
4. *The Analysis.*
   - Cross tabulation tables may have insufficient numbers in some cells.
   - A business's average contract size was calculated by dividing a business's total State sales by its total number of contracts. If the business had both contracts and "best judgment" sales to the State, average contract size may be overstated.
   - Factors influencing satisfaction may be related to one another. Therefore, relationships cited may result from a number of factors acting together to influence satisfaction.

RESULTS

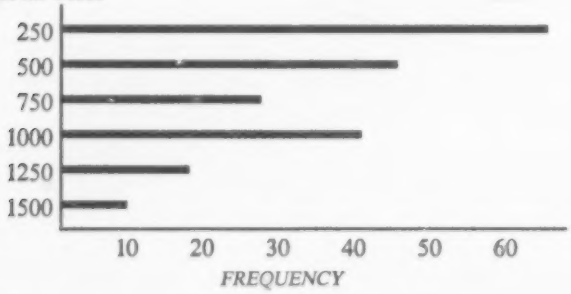
Response Rate

Response rate is calculated by dividing the number of completed questionnaires by the number of eligible businesses from the sample of 1,000. Response rate, calculated with an eligibility requirement, was 33.6%. (See Appendix)

Total Sales

When asked the total gross sales of their business in 1986:
- 32% of businesses reported total sales of $250,000 or less.
- 54% of businesses reported total sales of $500,000 or less.

Total Sales



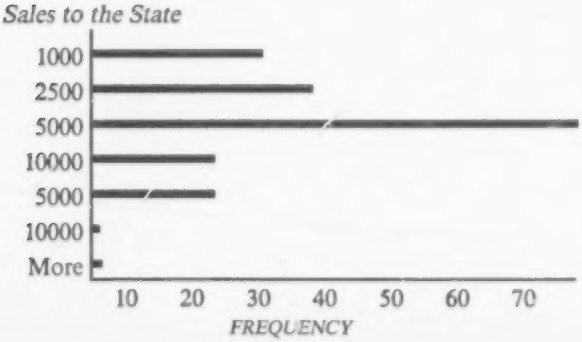
	FREQ.	CUM. FREQ.	PERCENT	CUM. PERCENT
250	66	66	31.58	31.58
500	46	112	22.01	53.59
750	28	140	13.40	66.99
1000	41	181	19.62	86.60
1250	18	199	8.61	95.22
1500	10	209	4.78	100.00

Sales to the State

When asked the total gross sales of their business to the State in 1986:
- 16% of businesses reported average State sales of $1,000.
- Almost three-fourths (73%) of businesses reported State sales of less than $5,000.

The smallest level of State sales was $50, the largest level was $650,000. The average level of State sales was $15,600.

Sales to the State



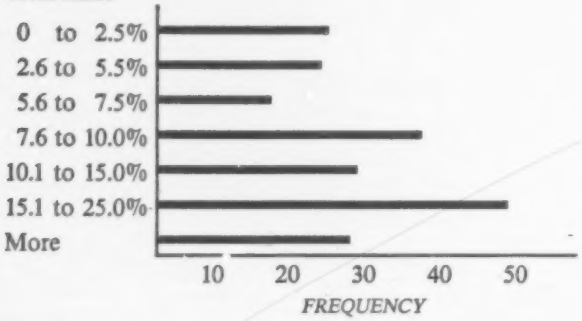
	FREQ.	CUM. FREQ.	PERCENT	CUM. PERCENT
1000	33	33	15.94	15.94
2500	41	74	19.81	35.75
5000	78	152	37.68	73.43
10000	25	177	12.08	85.51
5000	25	200	11.11	96.62
10000	3	203	1.45	98.07
More	4	207	1.93	100.00

Total Profit

When asked to estimate the profit on their 1986 total sales:

- 50% of businesses reported profit of 10% or less.
- 23% of businesses reported profits between 15% - 25%.
- The average profit margin was 8.5%.

Total Sales



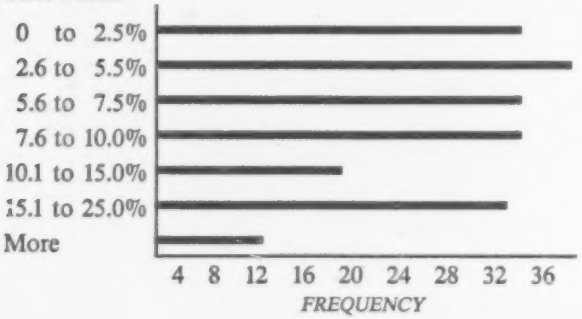
	FREQ.	CUM. FREQ.	PERCENT	CUM. PERCENT
0 to 2.5%	25	25	11.74	11.74
2.6 to 5.5%	24	49	11.27	23.00
5.6 to 7.5%	19	68	8.92	31.92
7.6 to 10.0%	38	106	17.84	49.77
10.1 to 15.0%	29	135	13.62	63.38
15.1 to 25.0%	50	185	23.47	86.85
More	28	213	13.15	100.00

State Profit

When asked to estimate the profit on their 1986 sales to the State:

- 52% of businesses reported profit of 7.5% or less on State sales.
- The average profit margin was 6.8%

State Profit



	FREQ.	CUM. FREQ.	PERCENT	CUM. PERCENT
0 to 2.5%	35	35	16.59	16.59
2.6 to 5.5%	39	74	18.48	35.07
5.6 to 7.5%	35	109	16.59	51.66
7.6 to 10.0%	35	144	16.59	68.25
10.1 to 15.0%	20	164	9.48	77.73
15.1 to 25.0%	34	198	16.11	93.84
More	13	211	6.16	100.00

- Wholesalers/distributors reported higher profit levels on State sales than the average for all types of businesses.

Comparing State Profit to Total Profit

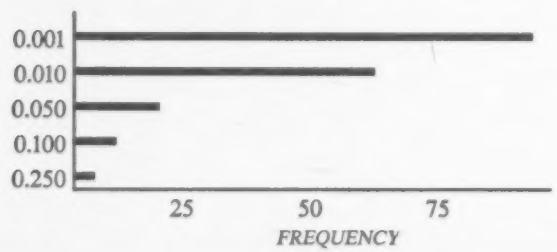
- On average, profits on State sales are nearly 2 percentage points less than profit on total sales.

Contribution

Contribution was calculated by dividing profit on sales to the State by profit on total sales.

- 48% of businesses have profits on State sales contributing less than 0.1% of their total profits.
- 81% of businesses have profits on State sales contributing less than 1% to their total profits.
- The average contribution to total profits was slightly under 3%.

Contribution



	FREQ.	CUM. FREQ.	PERCENT	CUM. PERCENT
0.001	92	92	47.92	47.92
0.010	64	156	33.33	81.25
0.050	21	177	10.94	92.19
0.100	10	187	5.21	97.40
0.250	5	192	2.60	100.00

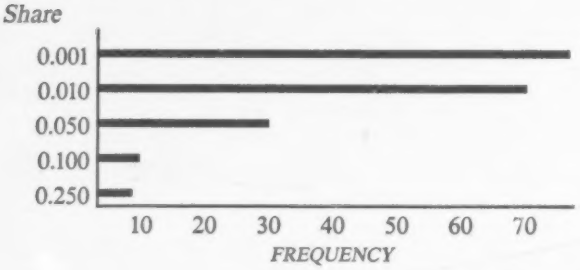
- Retailers reported a lower contribution than average.
- Manufacturing/construction and service businesses reported a higher contribution than average.
- Larger businesses (more than $750,000 in total sales) have lower contribution than average.
- Businesses with less than $2,500 sales to the State reported a much higher contribution than average.

Share

(Share was calculated by dividing State sales by total sales.)

- 75% have State sales less than or equal to 1% of total sales.
- 90% have State sales less than or equal to 5% of total sales.
- Only 9 businesses reported State sales equaling 25% or more of their total sales.
- The highest share was 54%.
- The average share was 3%.

Share



	FREQ.	CUM. FREQ.	PERCENT	CUM. PERCENT
0.001	78	78	39.39	39.39
0.010	71	149	35.86	75.25
0.050	30	179	15.15	90.40
0.100	10	189	5.05	95.45
0.250	9	198	4.55	100.00

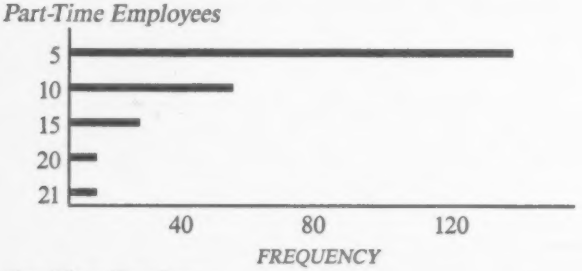
- Larger businesses have a lower share than do smaller businesses.
- Retail businesses have a lower share. Service and manufacturing businesses had a higher share than the average for all types of businesses.

Number of Employees

When asked how many employees they had in 1986:

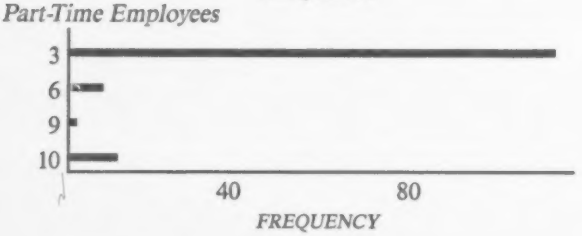
- 57% of businesses reported 5 or fewer full-time employees.
- 78% of businesses reported 3 or fewer part-time employees.

Part-Time Employees



	FREQ.	CUM. FREQ.	PERCENT	CUM. PERCENT
5	131	131	56.71	56.71
10	54	185	23.38	80.09
15	26	211	11.26	91.34
20	10	221	4.33	95.67
21	10	232	4.33	100.00

Part-Time Employees



	FREQ	CUM. FREQ.	PERCENT	CUM. PERCENT
3	116	116	77.85	77.85
6	14	130	9.40	87.25
9	3	133	2.01	89.26
10	16	149	10.74	100.00

Total Number of Employees

Total number of employees is calculated by treating two part-time employees as one full-time.

- 85% of businesses reported 15 or fewer employees.
- 10% of businesses reported 21 or more employees.

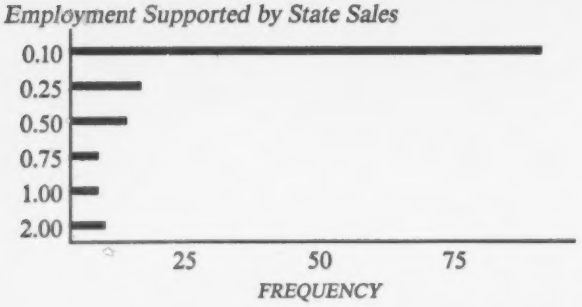
Number of Employees Supported by Sales to the State

This was calculated by multiplying a business's share (see above) by its total number of employees.

- For the 122 businesses whose responses allowed calculation of this impact measure, a total of 27 employees were supported by sales to the State.

- On the average, slightly less than 1/4 of an employee per business was supported by sales to the State.

Employment Supported by State Sales



	FREQ.	CUM. FREQ.	PERCENT	CUM. PERCENT
0.10	82	82	67.21	67.21
0.25	13	95	10.66	77.87
0.50	11	106	9.02	86.89
0.75	5	111	4.10	90.98
1.00	5	116	4.10	95.08
2.00	6	122	4.92	100.00

Numbers of Employees Added

When asked if their business added new employees as a result of sales to the State in 1986:
- 97% of businesses reported they did not add any new employees.
- 3% (eight businesses) reported adding full or part-time employees.
- The total number of employees added during 1986 due to State business was 8 full-time and 11 part-time employees.

Number of Employee Layoffs Avoided

When asked if sales to the State in 1986 prevented layoffs of employees:
- 4% of Businesses reported that sales to the State prevented layoffs.
- Businesses reported avoiding layoff of 20 full-time employees and 8 part-time employees because of sales to the State.

Number of Bids

When asked how many times their business bid for State business in 1986:
- 27% reported that they did not bid. This may represent businesses who sell to the State under the category "best judgment" or "simplified bid."
- 43% of businesses reported making 3 bids or less.

Number of Contracts

When asked how many contracts they received in 1986:
- 74% of the businesses reported receiving 1 or 2 contracts

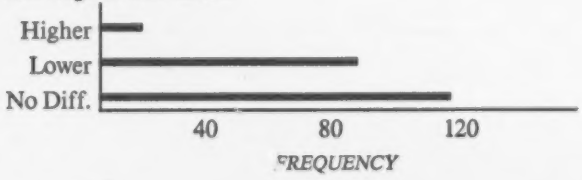
Success Rate

Success rate on bids was calculated by dividing the number of bids into the number of contracts received. In this calculation, businesses who did not bid were excluded, even if they reported receiving a contract.
- 29% had a success rate of 100% (each bid resulted in a contract).
- 37% bid but did not receive a contract.

Bidding Higher or Lower

When asked if they generally bid higher or lower for State business:
- Over half of businesses (54%) reported they bid no differently for State and private business.
- 40% of businesses reported they bid lower.
- 6% of businesses reported they bid higher.

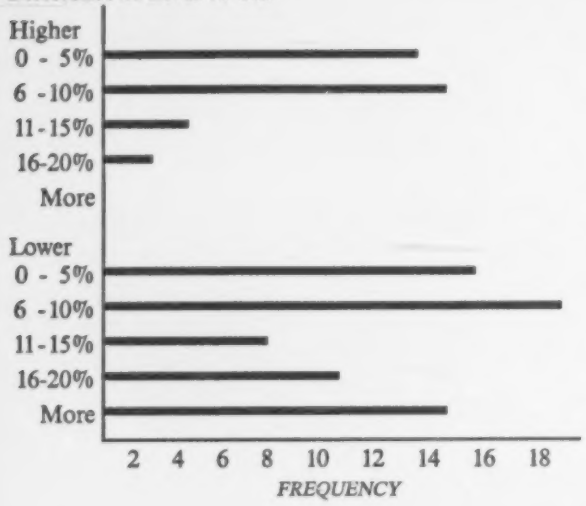
Bid Higher/Bid Lower



	FREQ.	CUM. FREQ.	PERCENT	CUM. PERCENT
Higher	14	14	6.33	6.33
Lower	88	102	39.82	46.15
No Diff.	119	221	53.85	100.00

Of those businesses who said they bid higher or lower for State contracts:
- More than three-fourths said they bid 0 to 10% higher.
- One-half bid more than 10% lower.

Difference in Level of Bid



	FREQ.	CUM. FREQ.	PERCENT	CUM. PERCENT
Higher				
0 - 5%	13	13	12.38	12.38
6 -10%	15	28	14.29	26.67
11-15%	5	33	4.76	31.43
16-20%	3	36	2.86	34.29
More	0	36	0.00	34.29
Lower				
0 - 5%	16	52	15.24	49.52
6 -10%	19	71	18.10	67.62
11-15%	8	79	7.62	75.24
16-20%	11	90	10.48	85.71
More	15	105	14.29	100.00

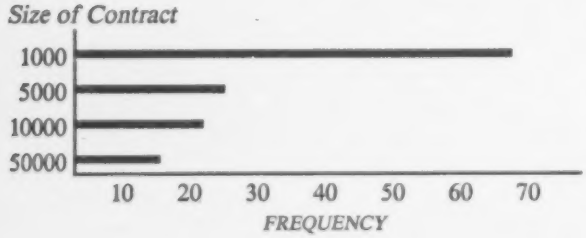
No significant difference was found in bidding behavior based upon the relative size of the business.

- Retail businesses bid lower for State contracts on the average than did other types of businesses.
- Manufacturing/construction businesses bid higher for State contracts on the average than did other categories of businesses.
- The higher its share (State sales - total sales), the more likely the business was to bid lower.
- Businesses with more than $2,500 in sales to the State are more likely to bid lower.

Size of Contract

Size of contract calculated by dividing a businesses's sales to the State by the number of contracts the business received.

Size of Contract



	FREQ.	CUM. FREQ.	PERCENT	CUM. PERCENT
1000	69	69	51.88	51.88
5000	26	95	19.55	71.43
10000	23	118	17.29	88.72
50000	15	133	11.28	100.00

- Size of the businesses had no impact on the average size of contract for the business.

Problems

When asked if they encountered problems in doing business with the State:

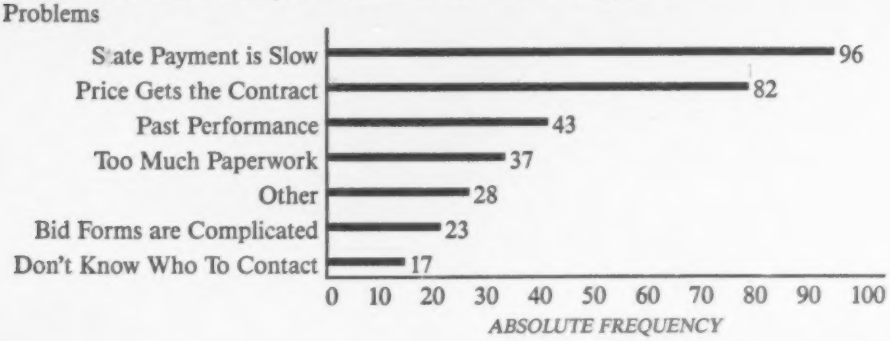
- Over one-half of the businesses reported no problems.
- The size has no real impact on how likely a business is to have problems in vending to the State.
- Wholesalers/distributors were more likely to report problems on the average than other categories of businesses.
- A younger business was more likely to report having problems in vending to the State (slight significance).

Specific Problems

Businesses who reported experiencing problems in doing business with the State identified the following specific problems. (Note that multiple responses were allowed).

- 84% reported slow State payment was a problem (Note: recent State legislation requires payment within 30 days.)
- The fact that only price, and not quality, gets the contract was reported as a problem by 71% of the businesses.

Specific Problems in Doing Business with the State of Wisconsin



Advantages

When asked if they thought there were advantages in doing business with the State:

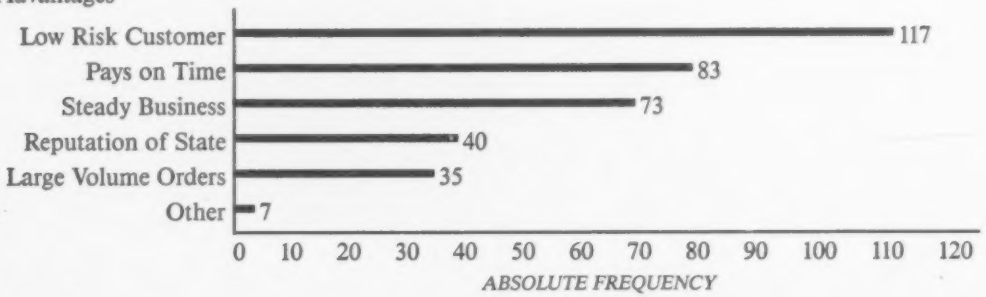
- 70% of businesses reported they believed there are advantages.
- Size of business had no effect on the likelihood that a business would report advantages.

Special Advantages

Businesses who said there were advantages in doing business with the State identified the following specific advantages:

- 71% believed the State is a low risk customer. (As one owner/manager noted, "The State will not move, the State will pay.")
- 51% say the State pays on time. (Note: Slow pay was identified as the biggest problem as well.)
- 45% reported the State as a source of steady business. This is consistent with the high proportion (70%) of businesses who have sold to the State for six or more years.

Specific Advantages in Doing Business with the State of Wisconsin

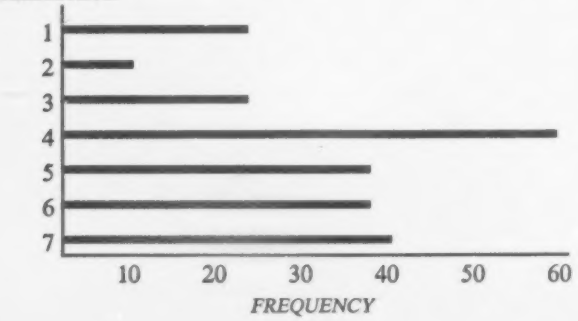


Satisfaction

When asked to rate their satisfaction with being a vendor to the State (on a seven-point scale where 1 = extremely dissatisfied and 7 = extremely satisfied).

- Almost twice as many businesses reported being greatly satisfied than reported being greatly dissatisfied.
- The average rating was 4.53.
- It can be said with confidence that more businesses are satisfied than dissatisfied in doing business with the State. (This is based upon calculation of a statistically significant z score)

Satisfaction



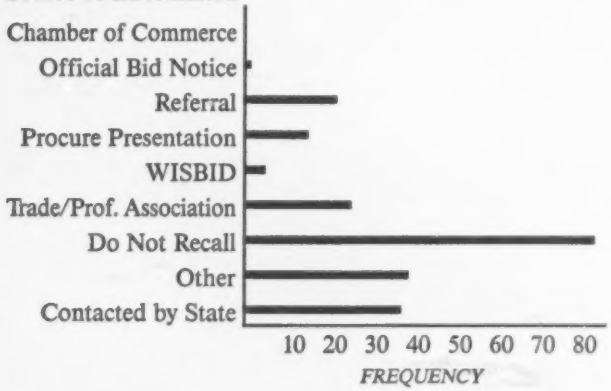
	FREQ.	*CUM. FREQ.*	*PERCENT*	*CUM. PERCENT*
1	23	23	9.87	9.87
2	10	33	4.29	14.16
3	23	56	9.87	24.03
4	60	116	25.75	49.79
5	38	154	16.31	66.09
6	38	192	16.31	82.40
7	41	233	17.60	100.00

- Size of a business did not have a significant impact on reported satisfaction.
- As a group, manufacturing/construction businesses were more satisfied than other types of businesses.
- The number of years a business sold to the State made no significant difference in the level of satisfaction they reported.
- Businesses who reported problems had a lower satisfaction level than average.
- Businesses who reported advantages had a higher satisfaction level than average.
- Businesses who reported more than 7.5% profit on state sales, are more satisfied than businesses with lower profits.
- The higher a business's share (State sales divided by total sales), the more likely it was to be satisfied.
- The absolute amount of sales to the State has no impact on satisfaction.
- The higher a business's contribution (state profit divided by total profit), the more likely it was to be satisfied.
- The higher a business's success rate (contracts divided by bids), the more likely it was to be satisfied.

Where Businesses Learned About Becoming a State Vendor

When asked how they learned about becoming a vendor to the State:

- 8% of businesses learned through the State Procurement presentation.
- 16% were contacted by the State. Two factors may account for this: 1) State employees make direct purchases (best judgment); and 2) procurement officers seek out new business vendors.
- No businesses reported learning through their Chamber of Commerce.
- 36% did not recall. This may, in part, be explained because many businesses have been vending to the state for more than 10 years.



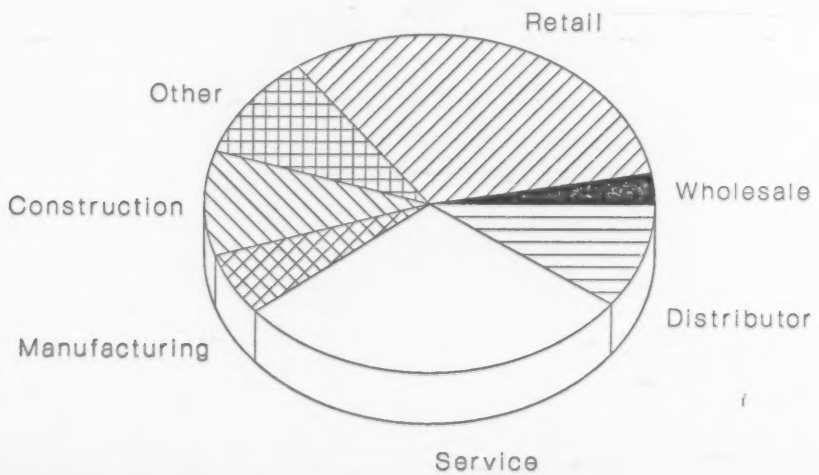
Source of Information	*FREQ.*	*CUM. FREQ.*	*PERCENT*	*CUM. PERCENT*
Chamber of Commerce	0	0	0.00	0.00
Official Bid Notice	2	2	0.87	0.87
Referral	23	25	9.96	10.82
Procure Presentation	18	43	7.79	18.61
WISBID	6	49	2.60	21.21
Trade/Prof. Association	26	75	11.26	32.47
Do Not Recall	82	157	35.50	67.97
Other	38	195	16.45	84.42
Contacted by State	36	231	15.58	100.00

Types of Business

When asked to describe what type of business they were:

- The largest number of businesses reported being retailers (32%) and service (29%).

Small Business Vendors to the State of Wisconsin by Type of Business



• Among smaller businesses with total sales under $750,000, the proportion of services businesses is higher than it is in the total sample.

Number of Years Vending to the State

When asked the years since 1977 (the last ten years) in which they sold to the State:

• 70% of businesses reported selling 6 or more years. This suggests businesses tend to remain state vendors.

Conclusions and Recommendation

The data from this study do not provide evidence of major positive economic impact with regard to profit, employment, or proportion of State sales to a business's total sales.

State dollars are shared by many vendors; therefore, any given individual business does not depend greatly on the State. This is consistent with State policy that encourages many vendors to participate and seeks out new vendors.

The level of economic impact varies by type of business, size of business, and amount of sales to the State.

70% of businesses believe there are advantages to selling to the State.

The new State prompt payment policy should: 1) improve cash flow for small businesses; 2) improve small business willingness to sell to the State.

The most frequently reported problem for small businesses was slow State pay. Interestingly, the second most cited advantage is that the State pays on time. One can see that prompt payment is critically important for small businesses. As small businesses continue to sell to the State, they will become aware of and benefit from the results of the new prompt payment policy.

The advantage most frequently reported by small businesses is that the State is a low risk customer. It is possible that vendors are willing to make the tradeoff between higher profit margins and lower risk.

There is an overall positive attitude towards the state, as measured by the level of satisfaction and the specific advantages cited. This attitude could be further improved by considering a number of criteria in addition to price in awarding bids to small businesses. These criteria might include such things as quality, service, promptness of delivery, and past performance.

By improving the procurement process for Wisconsin small business vendors, the State can contribute to economic development in Wisconsin and enhance Wisconsin's image as a progressive State.

APPENDIX
STATISTICAL DEFINITIONS USED IN REPORT

Results are interpreted using some or all of the following statistical measures: mode, median, mean, standard deviation, and z-score. Mode is the most frequently cited response. Median is the middlemost response, meaning there are as many values above this value as below it. The sum of all responses divided by the number of responses is the mean. This is denoted by: $X = \frac{xi}{n}$

Standard deviation measures the variability from the mean. It is calculated with following formula: $s = \frac{xi^2}{n} - x^2$

Finally, the z-score is a number resulting from translating response values into units of standard deviation. The z-score specifies how far above or below the mean a given score is in standard deviation units. It is calculated as follows: $z = \frac{x - x}{s}$

This value is than compared to a z-score table. The z-score table gives the percentage of cases falling between a given z-score and the mean(X).

APPENDIX
FORMULA FOR CALCULATING RESPONSE RATE

The formula used in calculating the response rate for this study is based upon guidelines provided by the Council of American Survey Research Organizations.[1]

Completed Questionnaires	=	287
Not Contacted (Undeliverable as addressed)	=	41
Refused (Did not return questionnaire)	=	623
Ineligible (More than $1.5 million sales)	=	49

[1] "On the Definition of Response Rates," CASRO Special Report (Port Jefferson, NY: The council of American Survey Research Organizations, 1982).

APPENDIX
CALCULATIONS FOR SATISFACTION

Question #9

The null hypothesis states: businesses are neither satisfied nor dissatisfied.

$H_0 : \blacktriangleleft 4$

$H_1 : \blacktriangleright 4$

$x = 4.53$
$n = 233$
$s = 0.44$
$= 4.00$

$$z \text{ test} = \frac{4.53 - 4.00}{0.44/\sqrt{233}} = 18.38$$

$z = 1.65$

z test ► 1.65, therefore reject H.

ENDNOTES

[1] Wisconsin Statutes S.16.73 (4)(c) define a small business as one which as under $1.5 million in gross sales in a calendar year.

[2] State profits for each business are calculated by multiplying the midpoint of the profit category selected times by State sales for that business. Total profits are calculated in the same way. For example, if a business checks the "O to 2.5%" profit category for its State sales, the midpoint of its profit range is 1.25%. If the business reports State sales of $800, its profit on State sales would be $10 ($800 x 0.0125). In the same manner, if total sales were reported at $120,000 and the profit category for total sales for the business was "7.5% to 10.0%" (midpoint = 8.75%), the profit on total sales is $10,500. The business's contribution is State profits divided by total profits (or $10 - $10,500 = 0.10%).

[3] "On the Definition of Response Rates," CASRO Special Report (Port Jefferson, NY: The council of American Survey Research Organizations, 1982).

Appendix F
Current Issues in Contracting for Services

The NASPO Research Committee offers the following two pieces as food for thought in the ongoing public discussion about the wisdom of public sector contracting for services. The first piece, "Essential Elements of Contractual Services", applies traditional and appropriate public purchasing techniques to the procurement of contractual services. Any unit of government looking for a basis to follow for the procurement of contractual services would be well-advised to incorporate into law, policy, and operating procedure the elements presented here.

The second piece, "Privatization and Contracting for State Services: A Guide" by Dr. Keon S. Chi, is a good academic review of the state of the art in contracting for services and privatization. Dr. Chi positively states the benefits of contracting for services, but describes the pitfalls as well if the procurement activity is not handled under the principles this text has enumerated for public procurement.

It is important to distinguish between the concepts of "cotracting for services" and "privatization". These terms have frequently been used in an interchangeable manner leading to confusion that has not helped the public discussion about public services provided by the private sector. "Contracting for Services" is the situation where the governmental unit relinquishes performance and authority, but not responsibility for the necessary service. In other words, a private sector business provides a public service under contract to the government unit who has built elements into the contract to assure levels of quality performance. "Privatization" is the situation where a governmental unit transfers both operation and responsibility for an activity to the private sector. The laws of supply and demand control the level and adequacy of service provided.

With these definitions in mind, these two separate, but related pieces are offered to further the public discussion about the private provision of public services.

ESSENTIAL ELEMENTS OF CONTRACTUAL SERVICES

Recommended Statutory Coverage

The purchasing statute should:

Provide the central purchasing office with the authority to contract for services which can be performed more economically and efficiently by contract.

Require purchasing to adopt rules or regulations for the purchase of services.

Require purchasing to adopt rules or regulations covering contract formation and establishing a dollar level for formal written contracts.

Require using agencies to prepare a Need Statement including, but not limited to, a description of the contractual service to be procured, identification of need, justification for not contracting with other agencies or employing limited term or project employees, and justification for the procurement process if a process other than competitive bidding is to be used.

Permit the use of competitive negotiation when the competitive sealed bid process is determined to be inappropriate, and require guidelines contained in rules or regulations.

Provide for review and recommendation by the personnel office (agency) under rules or regulations of the central purchasing office to insure the using agency:

a) Is properly utilizing the services of permanent employees
b) Has evaluated use of temporary employees
c) Is not in conflict with a collective bargaining agreement (if any)

Requiring purchasing to adopt rules or regulations to assure the selection of a contractor includes review of the independence and relationship, if any, of the contractor to an employee of the jurisdiction, disclosure of any former employment of the contractor or employees of the contractor with the jurisdiction and a procedure to minimize the likelihood of selection of a contractor who provides, or is likely to provide, services to industries, client groups, or individuals who are subject to regulation by the jurisdiction or the recipients of funding by the jurisdiction to a degree that the contractor's independence would be compromised.

Require the using agency to file an evaluation of the contractor's performance within (60) days after termination of the contract if performance is unsatisfactory.

Require the central purchasing office to adopt rules or regulations to assure future contracts are not awarded to contractors receiving unsatisfactory evaluation.

Requiring purchasing to report annually to the chief executive and presiding legislative officer on the number, value, and nature of contractual services during the preceding fiscal year.

Provide for personal liability of any officer or employee of the jurisdiction engaging any person to perform contractual services without the specific prior approval provided by law.

Recommended Regulatory Coverage

Rules or Regulations to implement the statute should:

Provide definitions for types of services, appropriate source selection and contract formation, and purchase of services documents.

Implementation of purchasing law requirement of Need Statement.

Implementation of purchasing law provisions for waiver of bidding as this applies to purchase of services.

Implementation of purchasing law provision for competitive negotiation.

Provide for disclosure and the process of disclosure.

Provide for standards and process of contract administration.

Provide for an administrative appeals procedure.

Privatization and Contracting for State Services: A Guide

by Keon S. Chi

In Brief

In recent years privatization has emerged as a trend-setting issue to be reckoned with by all levels of government. Some states have already conducted privatization feasibility studies and enacted enabling legislation to use private firms to deliver state services, while other states have considered but decided not to use such options. In essence, privatization means the use of the private sector in government management and delivery of public services. Contracting is the most frequently used form of privatization in state government; other privatization approaches include vouchers, grants and subsidies, franchise, asset sale, deregulation, volunteerism, private donation, public-private partnership, and service shedding. Proponents and opponents of privatization disagree on almost every issue raised: cost savings, quality of service, accountability, competition, flexibility of and policy coherence.

This report first identifies recent trends in privatization, defines different forms of and reasons for privatization and describes examples of privatization studies and laws. The second half of the report is devoted to highlighting the guidelines developed in Oregon for contracting for state services. The guidelines deal with specific conditions conducjve to contracting, cost comparison and employee union relations. The Oregon guidelines were selected in 1986 as an innovative state program by the Western Legislative Conference of The Council of State Governments. The report also offers a number of recommendations to alleviate the lack of incentives among state employees, especially agency managers, in considering privatization as a policy option and addresses new challenges to state policymakers presented by the privatization option.

PRIVATIZATION

Trends

The term privatization has become a buzz word in government management and delivery of public services in the past few years. Debate over privatization is taking place at all levels of government, in the private sector and academic community. There are indications that privatizing public services will continue to be a major concern to state policymakers. The concept of privatization is not new, however. Governments have long relied on the private sector for some in-house as well as public services. Viewed historically, most services provided by government today were once provided by private firms. What is new is that the level of interactions between the public and private sectors has been elevated recently and that governments have considered, or are considering, greater use of the private sector for more effective and efficient administration.

Local governments have used private enterprises extensively and the list of local services that have been privatized is long. These services include solid waste collection, street cleaning and repair, fire protection, water supply, wastewater treatment, fleet management, park maintenance, hospital and ambulance services, traffic signal maintenance and custodial and security services. According to a 1987 survey conducted by Touche Ross, nearly 80 percent of the local governments responding to the survey used or were planning to use privatization. The survey showed that greater demand for services, citizen resistance to tax increases and elimination of the federal revenue sharing program were three major factors that contributed to recent privatization of municipal services.

The federal government, through the use of OMB Circular A-76 "Performance of Commercial Activities," has also used private firms for various programs considered to be commercial activities. A-76 was conceived during the 1950s as a management policy of the federal government to rely on private firms for goods and services instead of competing with the private sector. During the Reagan Administration, A-76 received more attention to ensure that some of the commercial activities performed by federal workers could be privatized. Major projects undertaken during the Reagan Administration include the works of the Task Force on the Private Sector Initiatives in 1981, the President's Private sector Survey on Cost Control (Grace Commission) in 1984 and the President's Commission on Privatization in 1987. Candidates for privatization include: government assets, loans, insurance, transportation, natural resources, public safety and welfare programs and other commercial activities ranging from data processing to geological survey and industrial shops. Under an Executive Order issued in November 1987, all federal agencies were required by April 1988 to identify commercial activities they were performing for possible further privatization.

States have not been as quick to privatize as local governments or the federal government, but more states have begun experimenting with privatization. In the past, states relied on the private sector for legal, medical, engineering and technical professional services. In recent years, however, states have used private vendors for other public services traditionally performed by government employees. Several states have already conducted comprehensive privatization feasibility studies, established legislative committees on privatization and enacted privatization laws to implement alternative methods of delivering services.

Forms of Privatization

The term privatization has been defined variously: the transfer of government assets or functions to the private sector; the shifting of government services and state enterprises to private sector owners and/or suppliers; a shift from publicly to privately produced goods and services; and governmental reliance on the private sector to satisfy the needs of society. Some use the term "privatization" and the phrase "alternative service delivery" synonymously. Others use the term privatization to define a type of

government activity including "policy making, deciding, buying, requiring, regulating, franchising, financing, and subsidizing" and to define another type of government activity such as "operating, delivering, running, doing, selling, and administering." In essence, however, privatization means the use of the private sector in government management and delivery of public services.

Privatization may take several forms. The ten forms of privatization used or available in state government are as follows:

1. *Contracting*. The state enters into agreements with private firms, for profit or non-profit, to provide goods or services. The state funds private provision of public services. Contracting is used for in-house and professional services, transportation, health care and social services and to a lesser degree employment and training, mental health and mental retardation, fleet management and corrections.

2. *Vouchers*. This form of privatization allows the public to purchase services from private firms available in the open market. Like contracting, government pays for the service. Vouchers are used for social services and educational programs in several states. Examples include day care programs in Massachusetts and New Jersey, training and employment programs in Illinois and Massachusetts and the Distinguished Scholar program in New Jersey.

3. *Grants and Subsidies*. The state makes monetary contributions to help private organizations provide a service. A good example is the Employer Training Assistance Program in Illinois which provides financial assistance, in the form of grants and loans, to Illinois companies to help them cover training costs for their employees.

4. *Franchise*. This form gives monopoly privileges to a private firm to provide a service in a given geographical area. Franchises have been used in operating concession services in state parks, such as food services, stores, rentals of sporting equipment and recreational facilities. For example, Delaware has franchised concession services in state parks to for-profit businesses.

5. *Asset Sale*. The state sells, or "cashes out," its assets to private firms or individuals to shift government functions to the private sector. While the sale of public assets has not been a widespread trend in state government, some states sell state-owned surplus real and personal property to the private sector. For example, Pennsylvania's first surplus real estate disposition plan was approved by the state legislature in 1982. Similar sales have taken place in other states including California, Illinois, and New York.

6. *Deregulation*. The state removes its regulations from the service previously monopolized by government in favor of private provision of the service. After a half century of rigid government control, Florida returned its regulatory powers on motor carrier industry to the free market. Similar deregulations occurred in several other states including Arizona, Kansas, Maine and Wisconsin.

7. *Volunteerism*. States use volunteers to provide public services. A majority of state now have offices of volunteers to coordinate volunteer action programs. Volunteers provide a variety of services, such as visitor services in state parks, and geological studies in California, tutors, interpreters, drivers, and shopping assistants in Florida and the adoption program called "One Church and One Child Program" in Illinois.

8. *Private Donation*. The state may rely on the private sector for assistance in providing public services. Private firms may loan personnel, facilities or equipment to state agencies. The private sector also makes monetary or in-kind contributions to states for correctional services, state parks, or employment and training programs.

9. *Public-Private Partnership*. The state conducts projects, ranging from social services to economic development, in cooperation with representatives from private firms, relying on private resources instead of spending tax monies. Examples include the frequent use of private sector advisory commissions for cost control and efficiency studies, vocational education and employment training programs.

10. *Service Shedding*. The state drastically reduces the level of a service or stops providing a service so the private sector can assume the function. Some of human services programs as well as recreational services in state parks provided by state government have been considered as candidates for this form of privatization. Private charitable organizations may pick up such services with the help of taxpayers' contributions.

Reasons for Privatization

Why privatize? Reasons for privatizing state services vary greatly and may be summarized under four headings, cost savings, administrative expediency, management improvement, and ideology.

First, privatization has been and may be used by state government as a cost-saving measure. The underlying assumption of the federal government's privatization efforts is that privatization can be a more efficient and less costly way of delivering services. Cost savings may be achieved through either economies of scale in the open market due to competition among private providers. An OMB study of 1,700 cost comparison studies showed an average savings of approximately 20 percent, while the Grace Commission estimated a savings of $5.6 billion in 1985 for the federal government by contracting out more commercial activities and selling off government assets. Proponents of privatization contend that greater use of the private sector would help trim federal budget deficits and help states better deal with revenue shortfalls. Studies on privatization in local governments also indicate that many cities and counties contract local services out because of cost savings ranging from 10 percent to 40 percent or more, according to a 1987 survey by Touche Ross. A 1987 study for Florida's local governments by the University of Miami and Reason Foundation estimated privatization could yield an annual savings of up to $1.87 billion. Several states, including Oregon, also have developed privatization guidelines based on cost savings. But critics say that the lack of able and willing private providers in the market could merely transform government monopoly to private monopoly.

Second, privatization may take place in state government for administrative or political reasons as well. When agencies do not have the resources to perform certain functions,

or the state has a freeze on hiring, or the state has to meet certain deadlines, privatization has been called into use. Under these circumstances, cost-savings is not necessarily the prime motive for privatization. In fact, it may cost more to use private firms to perform speedy and high quality services. Quick actions are needed to deal with emergency situations. For example, the decision to contract out the operation and management of a state correctional facility in Kentucky was prompted by the need for rapid utilization of a facility to deal with prison overcrowding, not merely as a cost-cutting measure. A New Jersey privatization study found three major reasons for contracting state services: lack of technical expertise; short-term projects; and a workforce that did not meet growing service demands.

Third, the state may consider privatization as a management and productivity improvement tool. Proponents of privatization contend that in certain areas private organizations have the potential to provide the same or even better levels of services with less money than public organizations. One of the benefits of the private sector is that it has less red tape and bureaucracy. It is usually easier for the private sector to make quick investments in technology and to improve workforce productivity. Privatization proponents ask, "Why don't we let private firms provide state services that are basically commercial in nature? Isn't privatization a better management tool?" Privatization may also spur state employees to greater productivity when competing with the private sector. When the public is given more choice of providers and services through vouchers, privatization also can improve the quality of services.

Finally, ideology also plays a role in privatization. "Big government" is seen as a threat to some people. To them privatization is regarded as a way to cut the size of government. The "less government, the better" philosophy has been an impetus for privatization during the past few years. The debate over privatization seems centered around redefining the proper role of government. The question is whether government should remain a policymaker, regulator, manager and protector, or a producer or provider of certain public services. Proponents of privatization contend that government should not be involved in producing or providing commercial activities. Thus conservatives often perceive privatization as a policy innovation aiming at efficiency, while liberals tend to oppose privatization, expressing concerns about equity and accountability issues.

Opportunities for Privatization

In many cases, the first step to privatize services is to conduct a privatization feasibility study and enact an enabling law if necessary.

1. *Privatization study*

A state-wide or agency-wide privatization study may be initiated either by the legislature, the governor's executive order or a state agency to identify opportunities for greater use of private firms in delivering state services. Such a study may be conducted by a state agency, other public organizations or a private consultant. A few examples of such studies include:

- In 1984, Virginia produced one of the most comprehensive state privatization studies, "Contracting Services in Virginia," conducted by the Department of Planning and Budget. The study focused on analysis of "strong feasibility" for contracting. In 1986, Virginia's General Assembly mandated a privatization feasibility study for mental health and mental retardation facilities and the Department of Planning and Budget prepared a report, "The Feasibility of Contracting in Virginia's Mental Health and Mental Retardation Facilities."
- The Wisconsin Expenditure Commission, charged to study the potential benefits of privatization by the governor, submitted a report in 1986 entitled "Privatization in Wisconsin State and Local Governments." State agency heads responded to a survey conducted by the commission on the extent of privatization in their departments. The commission also used data gathered from counties, cities, and school districts. The study made a list of alternatives state and local governments could consider to further privatize public services.
- The Texas Commission on Economy and Efficiency in State Government sponsored a privatization study and the Lyndon B. Johnson School of Public Affairs at the University of Texas, Austin in 1986 produced a report, "Contracting Selected State Government Functions: Issues and Next Step." This document dealt with feasibility of contracting five state functions: care of the mentally retarded in communities; care of the mentally ill in institutions; medical services in state institutions; provision of food services in selected agencies; and operation of adult state adult correctional facilities. The LBJ School prepared another report in 1987 entitled "Contracting Selected State Government Functions: Legislation and Implementation."
- In June of 1986, the Connecticut Public/Private Partnership Commission produced a report, "Contracting-Out Selected Functions of the Connecticut Department of Motor Vehicles and Other State Agencies." The study conducted by a private consultant was designed to test a methodology for "the routine application of privatization techniques to functions and services" performed by state workers.

The New Jersey State and Local Expenditure and Revenue Policy Commission in 1987 completed a privatization study, "Alternative Methods for Delivering Public Services in New Jersey." The study, conducted by the Eagleton Institute of Politics, Rutgers University based on information collected from all departments of the state government and local governments, dealt with the extent of the use of contracts, intergovernmental agreements, vouchers, and use of voluntary organizations in state and local governments in New Jersey.

- In 1986 and 1987, a study team of researchers from The Urban Institute (UI) and The Council of State Governments (CSG) conducted two "Alternative Service Delivery" studies for Delaware and Maryland. Unlike other studies, these privatization studies involved state policymakers and administrators to identify opportunities for greater use of private firms. The UI-CSG study team held a series of workshops for participating state agency representatives over a period of several months to develop specific recommendations for future privatization opportunities.

2. *Privatization Laws*

Privatization may be implemented in some state governments under the existing statutory provisions. In many states, however, it might be necessary to have either minor revisions or a complete overhaul of the statute. By 1987, a majority of states had enacted a variety of enabling legislation to remove legal constraints preventing the implementation of privatization. State privatization laws may be grouped into three broad categories: general legislation applicable to all state agencies; legislation for specific state services; and legislation for specific local services.

- *General legislation for all state agencies*. A good example of this category of legislation is Colorado's privatization legislation (Colo. Rev. Stat. Ann. 24-113-101) effective in July of 1988. This legislation prohibits state agencies from competing with private enterprises by engaging in "the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise unless specifically authorized by law."
- *Legislation for selected state services*. Several states have enacted legislation to authorize certain state agencies to privatize selected services. For example, Senate Bill 251 in Texas allowed the Department of Corrections in 1987 to contract with private firms for the financing, construction, operation, maintenance, and management of four correctional facilities. In Indiana, a bill (House Bill 1072) designed to contract out the construction of an 800-bed state correctional facility for medium or maximum security inmates was passed by the House, but defeated in the Senate in February 1988.
- *Legislation authorizing local governments to privatize selected services*. Many state laws allow their political subdivisions to contract with private firms to handle wastewater and solid waste treatment facility. Other areas of local services authorized by states to contract include fire protection, water and electric power facility management and public works. Indiana's House Bill 1353 introduced in 1987 is designed to authorize local governments to negotiate contracts for "design, construction, operation, financing, ownership, or maintenance" of certain structures, which include parking facility, sewage works, solid waste disposal facility, waterworks, thoroughfare, toll road, waterway facility, automated infrastructure management system, urban mass transportation, underground tunnels, skyways, airports, air cargo facilities, hazardous waste facility, and port facility. A bill (LRB 5190/1) was introduced in the Wisconsin legislature in 1987 to allow local school districts to contract for the performance of teaching services by licensed teachers who are not employed by the school district. This legislation would give an alternative to school district administrators to use "private practice" teachers when needed, especially in subject areas where teachers are in short supply.

CONTRACTING

Of the ten forms of privatization described above, contracting is most frequently used in state government. In fact, privatization in most states means contracting. In this section, we highlight current trends in state government contracting, which will be followed by discussions on contract decisionmaking, cost comparison, union relations, incentives and other policy issues that state officials need to address when using the private sector in the delivery of state services.

State Contracts

States vary greatly in the frequency and service areas of contracting. A few examples illustrate this trend.

- In 1981, California wrote nearly 6,000 contracts worth more than $1.4 billion to carry out certain state administrative and public services. The largest share of the contracts went to health care service areas.
- In Minnesota, the largest number of contracts (2,178 worth more than $454 million) were let for transportation in 1983, followed by economic security (1,729 contracts) and energy and economic development (694 contracts).
- In fiscal year 1982-83, Virginia spent $954.5 million on contracts for in-house services and $18.4 million for public services, including individual and family services.
- In Wisconsin, the top four areas of contracted services have been health and social services, the University of Wisconsin system, labor and human relations, and transportation. In 1984-85, state agencies issued 39,538 nonconstruction or engineering contracts worth more than $186 million.
- According to the 1987 privatization study in New Jersey, the state departments of Banking, Civil Service, Community Affairs, Corrections, Education, Labor, State Treasury contracted out less than 5 percent of their operating budgets to private firms, while the Health Department spent about half and the departments of Agriculture, Energy and Environmental Protection spent nearly 25 percent of their operating budgets on contracts. The Department of Transportation spent about 75 percent of its budget for contracting for designing, building and maintaining roads and highways (see Table 1).

It is difficult to find out just how much and what types of state services are being contracted in the 50 state governments and territories. A survey of participants at the 1987 annual meeting of the National Association of State Purchasing Officials showed that some states (for example New Jersey, South Carolina, Utah, West Virginia, and Wisconsin) have contracted part of mental health and mental retardation, health care, employment training, transportation, facility management and maintenance, and professional and administrative services, while other states (for example, Tennessee and Washington) have not used contractors to provide such services except administrative services. A majority of states, however, have contracted a few selected public services.

States are improving their contracting processes. In the past, state agencies were criticized for the lack of rational contract decisionmaking. For example, in her study of human service contracting, political scientist Ruth Hoogland DeHoog concluded, "Contracting awards were often made without sufficient needs assessments, wide solicitations, or fair proposal reviews. Officials were seldom

Table 1
SUMMARY OF MAJOR PROGRAM AND SUPPORT SERVICES CONTRACTED OUT IN NEW JERSEY STATE DEPARTMENTS

Departments	*Programs and Activities*	*Support Services*
Agriculture	Inspections Advertising Testing Fish farm management	Building maintenance Administrative support Data management Accounting
Banking	None	None
Civil Service	Testing Training Arbitration	Building maintenance Printing Data management
Commerce	Advertising	Printing Data management
Community Affairs	Telephone hotline	Tech. consultants
Corrections	Medical services Drug treatment Halfway houses	Data management
Defense	None	Building maintenance Building security
Education	Testing Regional libraries Bibliographic services	Tech. Consultants Printing Administrative support
Energy	Recycling campaign Education programs	Tech. consultants Conserv. tetrofitting
Environmental Protection	Hazardous waste clean-up Water treatment Waste water treatment Shore protection Construction	Tech. consultants Laboratory analysis Research
Health (selective list)	Family planning Drug/alcohol abuse AIDS program Environmental health Lead poisoning Research and development Refugee health programs	(none identified)
Higher Education Educ. Oppor. Grants Educ. Conferences	Academic grant programs Loan management Program Evaluations	Data management
Human Services (selective list)	Mental health programs Medical assistance Health facilities Services for disabled Welfare services Youth/family services	Data management Audits Disbursements Claims processing Enforcement
Insurance	None	Actuarial reviews
Labor	Vocational training Expert Witnesses Motor Vehicle agencies Inspection stations	Data management Vehicle maintenance Micro-filming Tech. consultants
Public Advocate Program evaluation	Expert witnesses Attorneys	Court reporters Admin. support
State	None	Micro-filming
Transportation	Construction Design/planning Inspections Road maintenance	Tech. consultants Research
Treasury	Advertising/lottery	Data management Tech. consultants Building maintenance Property management

Source: Eagleton Institute of Politics Survey, Rutgers University, 1987.

concerned about cutting costs via contracting, rather they used this method to supply certain types of services to clients. Finally, objective performance monitoring and evaluations were found to be woefully inadequate because reviews were largely dependent upon information from contractors themselves."

Currently, according to a recent survey of the 50 states released in 1988 by the National Association of State Purchasing Officials, all but two states have or are actively developing a purchasing policy, rules, regulations or administrative procedures manual and 44 states have a contract procedures manual used in the central purchasing office. All but one state now have a central purchasing office which contracts for most or all state agencies.

Contract Decision-making

1. *Guidelines*

In order to determine whether a state service should be contracted out to a private firm the state needs to develop comprehensive guidelines for contracting. The guidelines should cover the usual steps in contracting, ranging from preparing a request for proposal to contract monitoring and evaluation. Such guidelines should also address the three most tricky issues: specific reasons for contracting, cost comparison method, and employee union relations.

- *The Oregon Guidelines*. One of the states with comprehensive guidelines for contracting state services is Oregon. In 1987, the state's Executive Department and Department of General Services published a document, "Guidelines for Contracting State Work," to help state agencies in conducting a formal feasibility study to determine the potential costs and benefits of contracting a state service. The guidelines deal with three areas in contract decisionmaking: specific conditions necessitating contracting, cost comparison, and employee (union) relations. But the guidelines were not intended as administrative rules or policies; rather these were designed to be general advice to state agencies for contract decisionmaking.
- *The Urban Institute-CSG Guidelines*. In 1987, the UI-CSG study team developed a detailed review process for "Analysis of Service Delivery Alternatives." This process was intended for use by any state agency, including a central management office such as an Office of Management and Budget. The process deals with selection of programs and agencies for review, workshops for representatives from participating agencies, group efforts to examine alternative service delivery approaches, cost comparison and provision of motivation and incentives to agency managers to encourage them to undertake a feasibility study.

2. *Conditions Conducive to Contracting*

According to the Oregon guidelines, state agencies are encouraged to consider contracting as an option when any of the following conditions exist:

- Newly created services with significant start-up costs.
- Specialized services and equipment.
- Worn out and obsolete equipment in need of replacement.
- Geographic location of client or customer base.
- Budget reductions or projected revenue shortfalls.
- Limited position availability.
- Hiring freeze.
- Lack of fund source or mechanism to replace equipment and facilities.
- A readily available market of service providers.
- Pay practices bar paying market wages to get needed services.
- Variable or uncertain workload.
- Labor intensive work that requires routine procedures and limited supervision and performance can be easily monitored.
- Skills to write work specifications, draft contracts and set up performance monitoring are present.
- If legislative or other mandates require it.

Under the Oregon guidelines, state agencies, as a first step, are expected to identify specific needs for contracting before a feasibility study is undertaken. Among the questions to be discussed are:

- What level of services is needed?
- How will performance and quality be measured?
- How often are tasks performed?
- What equipment, supplies, facilities, and utilities are needed?
- What staff skills are needed to perform the work, i.e. knowledge, education and training?
- Are there fluctuations in demand for service or workload?

The UI-CSG guidelines suggest criteria for assessing feasibility of using contracting (or other privatization forms) focusing more on future conditions than current ones. The following is a list of slightly modified criteria.

- To what extent do the state laws or regulations prevent or preclude contracting for the program or service relating to procurement and personnel?
- To what extent do federal laws or regulations make it difficult for the agency to contract the service?
- Is contracting consistent with the goals and policy direction of the agency's leadership?
- Is contracting consistent with the goals and policy direction of the governor's office?
- Is contracting consistent with the goals and policy direction of the legislature?
- Is there likely to be positive or negative reaction by the public to contracting a service?
- Will current personnel be displaced?
- Are there likely to be important consequences from failures?
- Are the number and quality of needed personnel likely to be available in the private sector?
- Are qualified personnel or organizations likely to be available in the labor market, both initially and in the future?
- Are new facilities, major new equipment, and/or major rehabilitation likely to be required?
- Are agency managers frustrated in their attempts to make desired changes in the program because of red tape, etc.?
- Are current state employees dissatisfied with program conditions and environment?
- Does the contracting provide a constructive competitive environment?

- Is the agency experienced in administering and monitoring a contracting arrangement?
- Is there opportunity for corruption, i.e. fraud, bribes, payoffs, etc.?
- Are there interrelationships with other programs or other agencies that would be affected positively or negatively?
- Are there substantial fluctuations or changes in workload both from month to month and over various times of the day or days of the week?
- Have there been any recent crises, major problems, or adverse publicity with the service, thus making contracting more feasible?

3. *Cost Comparison*

One of the most difficult tasks state officials face when contracting a state service is comparing in-house and contracting costs. Among the questions often asked is, "What costs need to be compared?" The cost comparison method prepared by the federal Office of Management and Budget to implement A-76 has been used in some states. The Oregon guidelines offer cost comparison elements as well as cost comparison worksheet (see Table 2). In-house costs include salaries and other personnel expenses, equipment (capital outlay) costs and services and supplies. Administrative overhead costs include service charges assessed on the basis of the agency's number of full-time equivalent positions. Estimates for contracting costs include contract management and monitoring costs as well as one time costs, including staff time to prepare the bid, the cost of training staff to administer the contract, the cost to set up a contract monitoring system, buyout of unused employee leave benefits, disposing of unused equipment, and unemployment expense if the work is done by staff and former employees do not remain with the contractor.

For a comparative cost analysis it is also important to make certain assumptions clear. The Oregon guidelines suggest that agencies use their own assumptions including the following:

- All equipment and supplies will be provided by the contractor and are included in the estimated bid price.
- The agency will bill the contractor for the office space and utilities provided.
- Half of the displaced state workers will choose to work for the contractor. Half of the displaced employees will file for unemployment compensation.

Table 2
COST COMPARISON OF CONTRACTING

	Current Costs with State Workers Providing Service	*Contractor A Estimated Price*	*Contractor B Estimated Price*
Estimated Contractor Price			
Base Expenses			
Salaries			
Fringe Benefits (OPE)			
Service & Supplies			
Equipment (Capital Outlay)			
Total Base Expenses			
Contract Management Costs			
Salary			
Fringe Benefits (OPE)			
Services & Supplies Cost			
Equipment (Capital Outlay)			
Total Contract Management Costs			
Contractor Support Costs			
Space provided			
Total Contractor Support			
One Time Costs			
Bid Preparation			
Staff Training			
Monitoring Systems Development			
Unemployment liability			
Continued Health Insurance			
Leave benefits buyout			
Depreciation write-off			
Sale of Surplus Property			
Total One Time Costs			
TOTAL BIENNIAL COSTS			
Savings/Loss in 1st Biennium			
Savings/Loss in Subsequent Biennia			
Less One-time Costs			

Source: The Oregon Department of General Services

• Displaced employees will exhaust all of their unemployment benefits before finding work.

• Buyout of vacation and sick leave based on projected amount of accrued leave for each employee at the end of the biennium.

Along with cost comparison analysis, state officials also need to decide how big should the cost savings be? Say 15 to 20 percent? Another question is, how soon do the savings need to be realized? The Oregon guidelines suggest, "Usually a reasonable break-even point of no more than three biennia should be used in deciding if contracting is cost effective. A break-even point beyond six years may be more speculative than your savings will sustain."

4. *Employee Union Relations*

Contracting is often viewed by government employee union leaders as "union busting." The American Federation of State, County and Municipal employees (AFSCME), for example, has led fights against privatization efforts at all levels of government. Indeed, privatization studies in several states, including Delaware, Maryland, New Jersey, Texas, Virginia and Wisconsin, have shown that employee resistance is one of the major impediments in expanding the contracting of state services.

In Oregon, as in several other states, state agencies may not be able to contract out state work without employee union approval. The contracting process provided in the contract between the state and the Oregon Public Employees Union (OPEU) is as follows:

• A state agency considering contracting work must conduct a formal feasibility study to determine the potential cost and benefits.

• The agency must notify the union within one week of its decision to do the study and indicate job classifications and work areas affected.

• OPEU must be given 30 days notice before an agency issues bids if contracting the work will displace bargaining unit workers.

• The agency must also tell the union the results of the feasibility study such as assumptions used, cost detail, projected cost savings, and expected quality changes, if any.

• OPEU may submit an alternative proposal, such as a productivity improvement program, during the 30 day notice period.

• The union proposal must be put into effect if it shows greater cost savings and quality improvements.

• The agency and OPEU are required to discuss the effect of contracting the work on bargaining unit workers if any full time bargaining union employee will lose their job.

• Once an agency decides to contract the work, it must either require the contractor to hire displaced workers or place the employees elsewhere in state government.

• Workers hired by the contractor must be paid the same rate of pay for at least six months subject only to "just cause" terminations.

• The agency will provide workers hired by the contractor with health and dental insurance coverage through the Bargaining Unit Benefits Board for six months.

The Oregon guidelines also suggest that state agencies contemplating contracting keep their employees fully informed of activities from the beginning. The guidelines say, "Don't think employees won't know what's going on. They will and what they imagine is happening may be worse than what is happening. Unions are concerned about employment of their members. As it affects their members, unions are as interested in the success of contracting state work as they are about union-developed alternative proposals."

Incentives for Privatization and Contracting

In an effort to reduce employee resistance and give incentives to federal employees to participate in privatization initiatives the President's Council on Management Improvement established the Privatization Concerns Task Group. The Task Group in July of 1986 released a report, "Employee Incentives for Privatization." Many of the suggested incentives can be considered by state government. The following is a summary of selected policy options under five approaches taken from the report.

• *Employee-owned business*. Under this approach, agencies would encourage employees to privatize commercial activities by converting them to employee-owned businesses, by transferring the capital assets of the government activity to the employee-owned businesses or by providing employee-owned businesses with services to organize and create businesses.

• *Pay and benefit policy revisions*. Under this approach, the retirement and severance pay systems may be revised by allowing displaced employees to continue to be eligible for Civil Service Retirement System benefits. The approach would either give back to employees payments made by their employing agencies to the Civil Service Retirement Trust Fund, or provide inflation protection to employees who elect to remain eligible for retirement, or give severance pay to employees, or provide employees the option of early retirement.

• *Job placement and retraining*. Under this approach, displaced workers may be employed in the private sector by instituting outside hiring restrictions, by using savings from contracting to retrain workers for jobs in other government agencies, by placing displaced workers with training vouchers or stipends to help transition to new occupations, or by soliciting private sector and contractor's assistance in finding jobs for displaced workers.

• *Employee and organized incentives*. Under this approach, individuals and agencies would receive monetary rewards for their efforts to privatize by tying performance appraisal, incentive bonuses and other forms of recognition to progress toward privatization. Employees would be given a share of the savings from privatization activities, or agencies could be allowed to retain a percentage of their savings in a revolving fund to be used to fund further privatization initiatives.

• *Contractor purchase of functions*. Under this approach, agencies could raise funds to pay for displaced employees by selling commercial functions to private businesses.

Upon completing its review for privatization opportunities for Delaware and Maryland, the UI-CSG study team also made a series of recommendations to alleviate the lack of incentives among state employees, especially high level agency managers. The eight recommendations are as follows:

- The department should schedule as a regular annual process program reviews emphasizing analyses of alternative service delivery approach.
- Agency heads should provide explicit support and encouragement of program review teams by emphasizing that the work is important and that results (in the form of program improvements) are expected, and by providing the necessary time and staff resources for the analysis.
- The government should provide that some percentage (i.e., 50 percent) of any savings resulting from the analysis be retained by the agency.
- The government should include in annual performance appraisals of agency managers explicit evaluation criteria on program efficiency and service quality, including the innovativeness of managers in attempting to improve these.
- The government should consider linking pay, at least in part, to performance on program efficiency, quality, and innovativeness.
- Department heads should indicate the importance of the review by their actions through providing adequate staffing for the reviews and seeing to it that the participants do not get pulled away from the reviews for long periods. Department heads also should monitor, through their staffs, the review team's efforts in order to periodically assess progress and to respond to the team's recommendations in a timely manner.
- The governor can greatly add to the motivation for these reviews by putting his/her weight behind them, thereby encouraging the department heads to undertake such program reviews.

THE PROSPECTS

Privatization is a multi-dimensional issue and presents new challenges to state policymakers. Such challenges may be summarized in four points.

First, as the several state privatization feasibility studies indicate, the trend toward privatization and contracting state services is likely to continue for several reasons. The size of government is not likely to increase as fast as it has been in the past two or three decades. As long as federal deficits remain as high as they have been in the past few years, state and local governments will have to anticipate continued federal aid cutbacks. State and local governments are faced with taxing limitations. Thus privatization will be examined more closely than ever before as a cost-saving and productivity improvement approach to meet growing demands in state and local services. Yet the strengths of the private sector should not be exaggerated, since the private sector has its own problems of inefficient management and loss of productivity. But private firms can deliver certain state services more efficiently without compromising the quality of services. No one should claim that privatization is a panacea for inefficient government management or that privatization is inherently superior to government services. The cost effectiveness of privatization may be highly situational.

Second, although several forms of privatization are available, contracting is likely to be more widely used than other forms. State governments have long used and will continue to use contracting. It will be interesting to see if states will use more for-profit firms, and on a competitive basis, than they have used in the past. In health care and human services areas, for example, states have traditionally preferred contracting with non-profit organizations rather than for-profit firms. It will also be interesting to see how extensively states will use the private sector to provide other state services currently performed by government employees. Obviously, not every state function can be easily contracted. Certain bank data and tax records, for example, might not be contracted out to private firms for security reasons. Defining such inherent government functions that cannot be contracted and commercial functions that can be performed by the private sector can be a challenging task.

Third, privatization might not be successfully implemented unless existing institutional and administrative hurdles are cleared. Agency managers' orientations are also important. Lessons from federal experiences tend to suggest that decentralized government authority in contracting government services, the intransigence of government agencies, application of the Davis-Bacon Act (which requires the contractor to pay prevailing labor wages), and unrealistic cost comparison procedures all can contribute to slow implementation or even failure of privatization. In the past, it is well to remember, some federal agencies had used various techniques to increase contract costs to deny privatization opportunities. Such techniques included requiring performance standards that could not be applied to government performance, inclusion of the full costs of Social Security, retirement and unemployment in the contracts, and requiring higher qualifications for private workers in excess of the qualifications required for federal employees. States should try to prevent such practices from taking place.

And, fourth, the success or failure of privatization depends on the public and private sectors. For state policymakers and administrators, a thorough pre-analysis of contracting opportunities, a carefully prepared request for proposal, and well-devised contract administration, monitoring and performance evaluation are essential for successful privatization. In contracting, it should be noted, the state still is responsible, and often assumes liability, for what the private contractor does. As far as the private sector is concerned, it is necessary for successful contracting to have qualified and capable private providers who can compete with each other in the labor market, who can provide prescribed goods or services without interruptions or mismanagement, and who will reject fraud, bribery, kickbacks, pay-offs and other illegal actions that state managers and employee unions are concerned about. The private sector should have a sense of public responsibility, besides its profit motives, in implementing other forms of privatization. The public and private sectors together can improve government management and delivery of state services through privatization.

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